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Statutes:

All laws specifically codified by the General Assembly of the State of Georgia through the 2015 Regular Session of the General Assembly.

Annotations of Judicial Decisions:

Case annotations reflecting decisions posted to LexisNexis® through April 3, 2015. These annotations will appear in the following traditional reporter sources: Georgia Reports; Georgia Appeals Reports; Southeastern Reporter; Supreme Court Reporter; Federal Reporter; Federal Supplement; Federal Rules Decisions; Lawyers' Edition; United States Reports; and Bankruptcy Reporter.

Annotations of Attorney General Opinions:

Constructions of the Official Code of Georgia Annotated, prior Codes of Georgia, Georgia Laws, the Constitution of Georgia, and the Constitution of the United States by the Attorney General of the State of Georgia posted to LexisNexis® through April 3, 2015.

Other Annotations:

References to:

Emory Bankruptcy Developments Journal.
Emory International Law Review.
Emory Law Journal.
Georgia Journal of International and Comparative Law.
Georgia Law Review.
Georgia State University Law Review.
John Marshall Law Review.
Mercer Law Review.
Georgia State Bar Journal.
Georgia Journal of Intellectual Property Law.
American Jurisprudence, Second Edition.
American Jurisprudence, Pleading and Practice.
American Jurisprudence, Proof of Facts.
American Jurisprudence, Trials.
Corpus Juris Secundum.
Uniform Laws Annotated.
American Law Reports, First through Sixth Series.
American Law Reports, Federal.

Tables:

In Volume 41, a Table Eleven-A comparing provisions of the 1976 Constitution of Georgia to the 1983 Constitution of Georgia and a Table Eleven-B comparing provisions of the 1983 Constitution of Georgia to the 1976 Constitution of Georgia.

An updated version of Table Fifteen which reflects legislation through the 2015 Regular Session of the General Assembly.

Indices:

A cumulative replacement index to laws codified in the 2015 supplement pamphlets and in the bound volumes of the Code.

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TITLE 48

REVENUE AND TAXATION

VOLUME 36

Chap.

VOLUME 37

CHAPTER 7

INCOME TAXES

Article 2

Imposition, Rate, and Computation; Exemptions

Sec.

Sec.

Cross references. — Selection on tax form of nonprofit corporations for contribution, § 20-3-316.1.

ARTICLE 2

IMPOSITION, RATE, AND COMPUTATION; EXEMPTIONS

48-7-27. Computation of taxable net income.

(a) Georgia taxable net income of an individual shall be the taxpayer's federal adjusted gross income, as defined in the United States Internal Revenue Code of 1986, less:

(1) Either the sum of all itemized nonbusiness deductions used in computing federal taxable income if the taxpayer used itemized nonbusiness deductions in computing federal taxable income or, if the taxpayer could not or did not itemize nonbusiness deductions, then a standard deduction as provided for in the following subparagraphs:

(A) In the case of a single taxpayer or a head of household, $2,300.00;

(B) In the case of a married taxpayer filing a separate return, $1,500.00;

(C) In the case of a married couple filing a joint return, $3,000.00;

(D) An additional deduction of $1,300.00 for the taxpayer if the taxpayer has attained the age of 65 before the close of the taxpayer's taxable year. An additional deduction of $1,300.00 for the spouse of the taxpayer shall be allowed if a joint return is made by the taxpayer and the taxpayer's spouse and the spouse has attained the age of 65 before the close of the taxable year; and

(E) An additional deduction of $1,300.00 for the taxpayer if the taxpayer is blind at the close of the taxable year. An additional deduction of $1,300.00 for the spouse of the taxpayer shall be allowed if a joint return is made by the taxpayer and the taxpayer's spouse and the spouse is blind at the close of the taxable year. For the purposes of this subparagraph, the determination of whether the taxpayer or the spouse is blind shall be made at the close of the taxable year except that, if either the taxpayer or the spouse dies during the taxable year, the determination shall be made as of the time of the death;

(2) The exemptions provided for in Code Section 48-7-26 together with the adjustments provided for in subsection (b) of this Code section;

(3)(A) The amount of salary and wage expenses eliminated in computing the individual's federal adjusted gross income because the individual has taken a federal jobs tax credit which requires, as

a condition to using the federal jobs tax credit, the elimination of related salary and wage expenses.

(B) The amount of mortgage interest eliminated from federal itemized deductions for the purpose of computing mortgage interest credit on the federal return;

(4)(A) Income received from public pension or retirement funds, programs, or systems the income from which is exempted by federal law or treaty when the income is otherwise included in the taxpayer's federal adjusted gross income.

(B) Except as specifically provided in subparagraph (A) of this paragraph, paragraph (5) of this subsection, and paragraph (7) of this subsection, for taxable years beginning on or after January 1, 1989, no income from a public pension or retirement fund, program, or system (including those pension or retirement funds, programs, or systems provided for in Title 47) shall be exempt from income taxation in this state, notwithstanding any provision of Title 47 or any other provision of law to the contrary;

(5)(A) Retirement income otherwise included in Georgia taxable net income shall be subject to an exclusion amount as follows:

(i) For taxable years beginning on or after January 1, 1989, and prior to January 1, 1990, retirement income not to exceed an exclusion amount of $8,000.00 per year received from any source;

(ii) For taxable years beginning on or after January 1, 1990, and prior to January 1, 1994, retirement income not to exceed an exclusion amount of $10,000.00 per year received from any source;

(iii) For taxable years beginning on or after January 1, 1994, and prior to January 1, 1995, retirement income from any source not to exceed an exclusion amount of $11,000.00;

(iv) For taxable years beginning on or after January 1, 1995, and prior to January 1, 1999, retirement income from any source not to exceed an exclusion amount of $12,000.00;

(v) For taxable years beginning on or after January 1, 1999, and prior to January 1, 2000, retirement income from any source not to exceed an exclusion amount of $13,000.00;

(vi) For taxable years beginning on or after January 1, 2000, and prior to January 1, 2001, retirement income not to exceed an exclusion amount of $13,500.00 per year received from any source;

(vii) For taxable years beginning on or after January 1, 2001, and prior to January 1, 2002, retirement income from any source not to exceed an exclusion amount of $14,000.00;

(viii) For taxable years beginning on or after January 1, 2002, and prior to January 1, 2003, retirement income from any source not to exceed an exclusion amount of $14,500.00;

(ix) For taxable years beginning on or after January 1, 2003, and prior to January 1, 2006, retirement income from any source not to exceed an exclusion amount of $15,000.00;

(x) For taxable years beginning on or after January 1, 2006, and prior to January 1, 2007, retirement income from any source not to exceed an exclusion amount of $25,000.00;

(xi) For taxable years beginning on or after January 1, 2007, and prior to January 1, 2008, retirement income from any source not to exceed an exclusion amount of $30,000.00;

(xii) For taxable years beginning on or after January 1, 2008, and prior to January 1, 2012, retirement income from any source not to exceed an exclusion amount of $35,000.00; and

(xiii) For taxable years beginning on or after January 1, 2012, retirement income from any source not to exceed an exclusion amount of $35,000.00 for each taxpayer meeting the eligibility requirement set forth in division (i) or (ii) of subparagraph (D) of this paragraph or an amount of $65,000.00 for each taxpayer meeting the eligibility requirement set forth in division (iii) of subparagraph (D) of this paragraph.

(B) In the case of a married couple filing jointly, each spouse shall if otherwise qualified be individually entitled to exclude retirement income received by that spouse up to the exclusion amount.

(C) The exclusions provided for in this paragraph shall not apply to or affect and shall be in addition to those adjustments to net income provided for under any other paragraph of this subsection.

(D) A taxpayer shall be eligible for the exclusions granted by this paragraph only if the taxpayer:

(i) Is 62 years of age or older but less than 65 years of age during any part of the taxable year; or

(ii) Is permanently and totally disabled in that the taxpayer has a medically demonstrable disability which is permanent and which renders the taxpayer incapable of performing any gainful occupation within the taxpayer's competence; or

(iii) Is 65 years of age or older during any part of the year.

(E) For the purposes of this paragraph, retirement income shall include but not be limited to interest income, dividend income, net

income from rental property, capital gains income, income from royalties, income from pensions and annuities, and no more than $4,000.00 of an individual's earned income. Earned income in excess of $4,000.00, including but not limited to net business income earned by an individual from any trade or business carried on by such individual, wages, salaries, tips, and other employer compensation, shall not be regarded as retirement income. The receipt of earned income shall not diminish any taxpayer's eligibility for the retirement income exclusions allowed by this paragraph except to the extent of the express limitation provided in this subparagraph.

(F) The commissioner shall by regulation require proof of the eligibility of the taxpayer for the exclusions allowed by this paragraph.

(G) The commissioner shall by regulation provide that for taxable years beginning on or after January 1, 1989, and ending before October 1, 1990, penalty and interest may be waived or reduced for any taxpayer whose estimated tax payments and tax withholdings are less than 70 percent of such taxpayer's Georgia income tax liability if the commissioner determines that such underpayment or deficiency is due to an increase in net taxable income attributable directly to amendments to this paragraph or paragraph (4) of this subsection enacted at the 1989 special session of the General Assembly and not due to willful neglect or fraud;

(6) A portion of the qualified payments to minority subcontractors, as provided in Code Section 48-7-38;

(7) Social security benefits and tier 1 railroad retirement benefits, to the extent included in federal taxable income;

(8) The amount of a dependent's unearned income included in federal adjusted gross income of a parent's return;

(9) An amount equal to the amount of contributions to the Teachers Retirement System of Georgia made by a taxpayer between July 1, 1987, and December 31, 1989, which contributions were not subject to federal income taxation but were subject to Georgia income taxation. The purpose of the exclusion provided for in this paragraph is to allow a taxpayer a recovery adjustment for such amount after commencement of distributions by such retirement system to such taxpayer and to establish the same basis for federal and state income tax purposes;

(10) With respect to a taxpayer who is a self-employed individual treated as an employee pursuant to Section 401(c)(1) of the Internal Revenue Code, an amount equal to the amount paid by the taxpayer

during the taxable year for insurance which constitutes medical care for the taxpayer and the spouse and dependents of the taxpayer which is not otherwise deductible by the taxpayer for federal income tax purposes because the applicable percentage for that taxable year as specified pursuant to Section 162(l) of the Internal Revenue Code is less than 100 percent;

(11) For taxable years beginning on or after January 1, 2002, and prior to January 1, 2007:

(A) An amount equal to the amount of contributions by parents or guardians of a designated beneficiary to a savings trust account established pursuant to Article 11 of Chapter 3 of Title 20 on behalf of the designated beneficiary who is claimed as a dependent on the Georgia income tax return of the beneficiary's parents or guardians, but not exceeding $2,000.00 per beneficiary;

(B) If the parents or guardians file joint returns, separate returns, or single returns, the sum of contributions constituting deductions on their returns under this paragraph shall not exceed $2,000.00 per beneficiary;

(C) In order to claim the deduction for a taxable year:

(i) Such parent or guardian must have claimed and been allowed itemized deductions pursuant to Section 63(d) of the Internal Revenue Code of 1986 and paragraph (1) of this subsection;

(ii) The federal adjusted gross income for such taxable year cannot exceed $100,000.00 for a joint return or $50,000.00 for a separate or single return except as provided in subparagraph (D) of this paragraph; and

(iii) Such parent or guardian must be the account owner of the designated beneficiary's account;

(D) The maximum deduction authorized by this paragraph for each beneficiary shall decrease by $400.00 for each $1,000.00 of federal adjusted gross income over $100,000.00 for a joint return or $50,000.00 for a separate or single return; and

(E) For purposes of this paragraph, contributions or payments for any such taxable year may be made during or after such taxable year but on or before the deadline for making contributions to an individual retirement account pursuant to Section 219(f)(3) of the Internal Revenue Code of 1986;

(11.1) For taxable years beginning on or after January 1, 2007:

(A) An amount equal to the amount of contributions to a savings trust account established pursuant to Article 11 of Chapter 3 of

Title 20 on behalf of the designated beneficiary, but not exceeding $2,000.00 per beneficiary;

(B) If the contributor files a separate return or single return, the sum of contributions constituting deductions on the contributor's return under this paragraph shall not exceed $2,000.00 per beneficiary;

(C) If the contributor files a joint return, the sum of contributions constituting deductions on the contributor's return under this paragraph shall not exceed $2,000.00 per beneficiary; and

(D) For purposes of this paragraph, contributions or payments for any such taxable year may be made during or after such taxable year but on or before the deadline for making contributions to an individual retirement account under federal law for such taxable year;

(12) Military income received by a member of the National Guard or any reserve component of the armed services of the United States stationed in a combat zone or stationed in defense of the borders of the United States pursuant to military orders. The exclusion provided under this paragraph:

(A) Shall apply with respect to each taxable year, or portion thereof, covered by such military orders; and

(B) Shall apply only with respect to such member of the National Guard or any reserve component of the armed forces and only with respect to military income earned during the period covered by such military orders;

(12.1)(A) Disability income from the United States Department of Veterans Affairs received by a disabled veteran who is a citizen and resident of Georgia.

(B) As used in this paragraph, the term "disabled veteran" means any wartime veteran who was discharged under honorable conditions and who has been adjudicated by the United States Department of Veterans Affairs as being at least 90 percent totally and permanently disabled and entitled to receive service connected benefits and any veteran who is receiving or who is entitled to receive a statutory award from the United States Department of Veterans Affairs for:

(i) Loss or permanent loss of use of one or both feet;

(ii) Loss or permanent loss of use of one or both hands;

(iii) Loss of sight in one or both eyes; or

(iv) Permanent impairment of vision of both eyes of the following status: Central visual acuity of 20/200 or less in the

better eye, with corrective glasses, or central visual acuity of more than 20/200 if there is a field defect in which the peripheral field has contracted to such an extent that the widest diameter of visual field subtends on angular distance no greater than 20 degrees in the better eye;

(13)(A) An amount equal to the actual amount expended for organ donation expenses not to exceed the amount of $10,000.00 incurred in accordance with the "National Organ Procurement Act."

(B) In order to qualify for the exclusion under subparagraph (A) of this paragraph, such taxpayer must, while living, donate all or part of such person's liver, pancreas, kidney, intestine, lung, or bone marrow. In the taxable year in which the donation is made, the taxpayer shall be entitled to claim the exclusion provided in subparagraph (A) of this paragraph only with respect to unreimbursed travel expenses, lodging expenses, and lost wages incurred as a direct result of the organ donation;

(13.1) An amount equal to 100 percent of the premium paid by the taxpayer during the taxable year for high deductible health plans as defined by Section 223 of the Internal Revenue Code to the extent the deduction has not been included in federal adjusted gross income, as defined under the Internal Revenue Code of 1986, and the expenses have not been provided from a health reimbursement arrangement and have not been included in itemized nonbusiness deductions;

(13.2)(A) An amount equal to $1,000.00 for any physician who served as the community based faculty physician for a medical core clerkship provided by community based faculty.

(B) An amount equal to $1,000.00 for any physician who served as the community based faculty physician for a physician assistant core clerkship provided by community based faculty.

(C) An amount equal to $1,000.00 for any physician who served as the community based faculty physician for a nurse practitioner core clerkship provided by community based faculty.

(D) As used in this paragraph, the term:

(i) "Community based faculty physician" means a noncompensated physician who provides a minimum of three and a maximum of ten clerkships within a calendar year.

(ii) "Medical core clerkship," "physician assistant core clerkship," or "nurse practitioner core clerkship" means a clerkship for a student who is enrolled in a Georgia medical school, a Georgia physician assistant school, or a Georgia nurse practitioner school and who completes a minimum of 160 hours of community based

instruction in family medicine, internal medicine, pediatrics, obstetrics and gynecology, emergency medicine, psychiatry, or general surgery under the guidance of a community based faculty physician.

(E) The state-wide Area Health Education Centers Program Office at Georgia Regents University shall administer the program and certify rotations for the department.

(F) This paragraph shall apply to all taxable years beginning on or after January 1, 2014;

(14) The deduction for school teachers provided and allowed by Section 62(a)(2)(D) of the Internal Revenue Code of 1986 as enacted on or before January 1, 2005, to the extent the deduction has not been included in federal adjusted gross income, as defined under the Internal Revenue Code of 1986, and the expenses have not been included in itemized nonbusiness deductions; and

(15) The deduction provided and allowed by Section 179 of the Internal Revenue Code of 1986 as enacted on or before January 1, 2005, to the extent the deduction has not been included in federal adjusted gross income, as defined under the Internal Revenue Code of 1986, and the expenses have not been included in itemized nonbusiness deductions.

(b)(1) There shall be added to the taxable income:

(A) Dividend or interest income, to the extent that the dividend or interest income is not included in gross income for federal income tax purposes, on obligations of any state except this state or of political subdivisions except political subdivisions of this state;

(B) Interest or dividends on obligations of the United States or of any authority, commission, instrumentality, territory, or possession of the United States which by the laws of the United States are exempt from federal income taxes but not from state income taxes; and

(C) Income consisting of lump sum distributions from an annuity, pension plan, or similar source which were removed from federal adjusted gross income for the purposes of special federal tax computations or treatment.

(2) There shall be subtracted from taxable income interest or dividends on obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States. Any amount subtracted under this para-

graph shall be reduced by any interest expenses directly or indirectly attributable to the production of the interest or dividend income.

(3) There shall be added to taxable income any income taxes imposed by any tax jurisdiction except the State of Georgia to the extent deducted in determining federal taxable income.

(4) No portion of any deductions or losses including, but not limited to, net operating losses, which occurred in a year in which the taxpayer was not subject to taxation in this state, may be deducted in any tax year. When federal adjusted gross income includes deductions or losses not allowed pursuant to this paragraph, an adjustment deleting them shall be made under rules established by the commissioner.

(5) Income, losses, and deductions previously used in computing Georgia taxable income shall not again be used in computing Georgia taxable income; and the commissioner shall provide for needed adjustments by regulation.

(6) Reserved.

(7) Except as otherwise provided in paragraph (4) of subsection (a) of this Code section, this chapter shall not be construed to repeal any tax exemptions contained in other laws of this state not referred to in this Code section. Those exemptions and the exemptions provided by federal law and treaty shall be deducted on forms provided by the commissioner.

(8) All elections made by the taxpayer under the Internal Revenue Code of 1954 or the Internal Revenue Code of 1986 shall also apply under this article.

(9) If the taxpayer claims the tax credit provided for in subsection (d) of Code Section 48-7-40.6 with respect to qualified child care property, Georgia taxable income shall be increased by any depreciation deductions attributable to such property to the extent such deductions are used in determining federal taxable income.

(10)(A) Except as otherwise provided in subparagraph (C) of this paragraph, the amount of any qualified withdrawals from a savings trust account under Article 11 of Chapter 3 of Title 20 shall not be subject to state income tax under this chapter.

(B) For withdrawals other than qualified withdrawals from such a savings trust account, the proportion of earnings in the account balance at the time of the withdrawal shall be applied to the total funds withdrawn to determine the earnings portion to be included in the account owner's taxable net income in the year of withdrawal.

(C) For withdrawals other than qualified withdrawals from such a savings trust account and for withdrawals from such a savings trust account which are rolled over to a qualified tuition program other than the qualified tuition program established under Article 11 of Chapter 3 of Title 20, the proportion of the contributions in an account balance at the time of a withdrawal which previously have been used to reduce taxable net income pursuant to subsection (a) of this Code section shall be applied to the nonearnings portion of the total funds withdrawn to determine an amount to be included in the account owner's taxable net income in the same taxable year.

(11) Georgia taxable income shall be adjusted as provided in Code Section 48-7-28.3.

(12) Georgia taxable income shall be increased by the amount of the payments, compensation, or other economic benefit disallowed by Code Section 48-7-21.1.

(13) Georgia taxable income shall be adjusted as provided in Code Section 48-7-28.4.

(c) Georgia taxable income shall, if the taxpayer so elects, be adjusted with respect to federal depreciation deductions as provided in Code Section 48-7-39.

(d)(1)(A) As used in this paragraph, the term "individual" shall mean the same as is defined in Code Section 48-1-2.

(B) Georgia resident shareholders of Subchapter "S" corporations may make an adjustment to federal adjusted gross income for Subchapter "S" corporation income where another state does not recognize a Subchapter "S" corporation.

(C) A Georgia individual resident who is a partner in a partnership, who is a member of a limited liability company taxed as a partnership, or who is a single member of a limited liability company which is disregarded for federal income tax purposes may make an adjustment to federal adjusted gross income for the entity's income taxed in another state which imposes on the entity a tax on or measured by income.

(D) Adjustments pursuant to this paragraph shall only be allowed for the portion of the income on which such tax was actually paid by such Subchapter "S" corporation, partnership, or limited liability company. In multitiered situations, the adjustment for such individual shall be determined by allocating such income between the shareholders, partners, or members at each tier based upon their profit/loss percentage.

(2) Nonresident shareholders of a Georgia Subchapter "S" corporation shall execute a consent agreement to pay Georgia income tax

on their portion of the corporate income in order for such Subchapter "S" corporation to be recognized for Georgia purposes. A consent agreement for each shareholder shall be filed by the corporation with its corporate tax return in the year in which the Subchapter "S" corporation is first required to file a Georgia income tax return. For a Subchapter "S" corporation in existence prior to January 1, 2008, the consent agreement shall be filed for each shareholder in the first Georgia tax return filed for a year beginning on or after January 1, 2008. A consent agreement shall also be filed in any subsequent year for any additional nonresident who first becomes a shareholder of the Subchapter "S" corporation in that year. Shareholders of a federal Subchapter "S" corporation which is not recognized for Georgia purposes may make an adjustment to federal adjusted gross income in order to avoid double taxation on this type of income. Adjustments shall not be allowed unless tax was actually paid by such corporation. (Code 1933, § 92-3107, enacted by Ga. L. 1971, p. 605, § 4; Ga. L. 1975, p. 843, § 1; Ga. L. 1978, p. 1456, § 1; Ga. L. 1979, p. 888, § 2; Code 1933, § 91A-3607, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 67; Ga. L. 1979, p. 888, § 4; Ga. L. 1980, p. 10, §§ 17, 18; Ga. L. 1981, p. 1857, §§ 35, 36; Ga. L. 1981, p. 1903, §§ 3, 4; Ga. L. 1982, p. 3, § 48; Ga. L. 1984, p. 1644, § 2; Ga. L. 1986, p. 749, § 1; Ga. L. 1986, p. 1480, § 1; Ga. L. 1987, p. 191, § 2; Ga. L. 1988, p. 475, § 2; Ga. L. 1989, p. 1112, §§ 1-3; Ga. L. 1989, Ex. Sess., p. 5, § 1; Ga. L. 1990, p. 1369, § 1; Ga. L. 1992, p. 1296, § 1; Ga. L. 1992, p. 2977, § 1; Ga. L. 1994, p. 381, § 2; Ga. L. 1998, p. 1, § 2; Ga. L. 1998, p. 1515, § 1; Ga. L. 1998, p. 1516, § 1; Ga. L. 1999, p. 13, § 2; Ga. L. 2000, p. 408, § 1; Ga. L. 2001, p. 76, §§ 2, 3; Ga. L. 2002, p. 372, §§ 2, 3; Ga. L. 2002, p. 1149, § 1; Ga. L. 2003, p. 637, § 1; Ga. L. 2003, p. 665, §§ 4, 5; Ga. L. 2004, p. 102, § 1; Ga. L. 2005, p. 18, § 1/HB 263; Ga. L. 2005, p. 30, § 1/HB 191; Ga. L. 2005, p. 60, § 48/HB 95; Ga. L. 2005, p. 157, § 2/HB 282; Ga. L. 2005, p. 159, §§ 13, 14/HB 488; Ga. L. 2005, p. 529, § 1/HB 556; Ga. L. 2006, p. 526, § 1/HB 1160; Ga. L. 2007, p. 112, § 2/HB 225; Ga. L. 2007, p. 271, §§ 3, 4/SB 184; Ga. L. 2008, p. 159, §§ 7, 8/HB 1014; Ga. L. 2008, p. 292, § 4/HB 977; Ga. L. 2008, p. 324, § 48/SB 455; Ga. L. 2008, p. 898, §§ 6, 7/HB 1151; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2009, p. 652, § 4/HB 410; Ga. L. 2009, p. 796, § 2/HB 379; Ga. L. 2010, p. 9, § 4-1/HB 1055; Ga. L. 2012, p. 108, § 1/HB 808; Ga. L. 2012, p. 257, § 2-2/HB 386; Ga. L. 2013, p. 141, § 48/HB 79; Ga. L. 2014, p. 83, § 2-1/SB 391.)

The 2014 amendment, effective July 1, 2014, added paragraph (a)(13.2).

48-7-29.8. (For effective date, see note.) Tax credits for the rehabilitation of historic structures; conditions and limitations.

(a) (For effective date, see note.) As used in this Code section, the term:

(1) "Certified rehabilitation" means repairs or alterations to a certified structure which are certified by the Department of Natural Resources as meeting the United States Secretary of the Interior's Standards for Rehabilitation or the Georgia Standards for Rehabilitation as provided by the Department of Natural Resources.

(2) "Certified structure" means a historic building or structure that is located within a national historic district, individually listed on the National Register of Historic Places, individually listed in the Georgia Register of Historic Places, or is certified by the Department of Natural Resources as contributing to the historic significance of a Georgia Register Historic District.

(3) "Historic home" means a certified structure which, or any portion of which is or will, within a reasonable period, be owned and used as the principal residence of the person claiming the tax credit allowed under this Code section. Historic home shall include any structure or group of structures that constitute a multifamily or multipurpose structure, including a cooperative or condominium. If only a portion of a building is used as such person's principal residence, only those qualified rehabilitation expenditures that are properly allocable to such portion shall be deemed to be made to a historic home.

(4) "Qualified rehabilitation expenditure" means any qualified rehabilitation expenditure as defined by Section 47(c)(2) of the Internal Revenue Code of 1986 and any amount properly chargeable to a capital account expended in the substantial rehabilitation of a structure that by the end of the taxable year in which the certified rehabilitation is completed is a certified structure. This term does not include the cost of acquisition of the certified structure, the cost attributable to enlargement or additions to an existing building, site preparation, or personal property.

(5) "Substantial rehabilitation" means rehabilitation of a certified structure for which the qualified rehabilitation expenditures, at least 5 percent of which must be allocable to the exterior during the 24 month period selected by the taxpayer ending with or within the taxable year, exceed:

(A) For a historic home, the lesser of $25,000.00 or 50 percent of the adjusted basis of the property as defined in subparagraph

(a)(1)(B) of Code Section 48-5-7.2; or, in the case of a historic home located in a target area $5,000.00; or

(B) For any other certified structure, the greater of $5,000.00 or the adjusted basis of the property.

(6) "Target area" means a qualified census tract under Section 42 of the Internal Revenue Code of 1986, found in the United States Department of Housing and Urban Development document number N-94-3821; FR-3796-N-01.

(b) (For effective date, see note.) A taxpayer shall be allowed a tax credit against the tax imposed by this chapter for the taxable year in which the certified rehabilitation is completed:

(1) In the case of a historic home, equal to 25 percent of qualified rehabilitation expenditures, except that, in the case of a historic home located within a target area, an additional credit equal to 5 percent of qualified rehabilitation expenditures shall be allowed; and

(2) In the case of any other certified structure, equal to 25 percent of qualified rehabilitation expenditures.

Qualified rehabilitation expenditures may only be counted once in determining the amount of the tax credit available, and more than one entity may not claim a credit for the same qualified rehabilitation expenditures.

(c)(1) (For effective date, see note.) In no event shall credits for a historic home exceed $100,000.00 in any 120 month period.

(2) The maximum credit for any other individual certified structure shall be $5 million for any taxable year, except in the case that the project creates 200 or more full-time, permanent jobs or $5 million in annual payroll within two years of the placed in service date, in which case the project is eligible for credits up to $10 million for an individual certified structure. In no event shall more than one application for any individual certified structure under this paragraph be approved in any 120 month period.

(3) In no event shall credits issued under this Code section for projects earning more than $300,000.00 in credits exceed in the aggregate $25 million per calendar year.

(d)(1) (For effective date, see note.) A taxpayer seeking to claim a tax credit under paragraph (2) of subsection (b) of this Code section shall submit an application to the commissioner for preapproval of such tax credit. Such application shall include a precertification from the Department of Natural Resources certifying that the improvements to the certified structure are to be consistent with the Department of Natural Resources Standards for Rehabilitation. The Department

shall have the authority to require electronic submission of such application in the manner specified by the department. The commissioner shall preapprove the tax credits within 30 days based on the order in which properly completed applications were submitted. In the event that two or more applications were submitted on the same day and the amount of funds available will not be sufficient to fully fund the tax credits requested, the commissioner shall prorate the available funds between or among the applicants. For applications on projects over the annual $25 million limitation, those applications shall be given priority the following year.

(2) In order to be eligible to receive the credit authorized under subsection (b) of this Code section, a taxpayer must attach to the taxpayer's state tax return a copy of the completed certification of the Department of Natural Resources verifying that the improvements to the certified structure are consistent with the Department of Natural Resources Standards for Rehabilitation.

(e)(1) (For effective date, see note.) If the credit allowed under paragraph (1) of subsection (b) of this Code section in any taxable year exceeds the total tax otherwise payable by the taxpayer for that taxable year, the taxpayer may apply the excess as a credit for succeeding years until the earlier of:

(A) The full amount of the excess is used; or

(B) The expiration of the tenth taxable year after the taxable year in which the certified rehabilitation has been completed.

(2) Any tax credits with respect to credits earned by a taxpayer under paragraph (2) of subsection (b) of this Code section and previously claimed but not used by such taxpayer against its income tax may be transferred or sold in whole or in part by such taxpayer to another Georgia taxpayer, subject to the following conditions:

(A) A taxpayer who makes qualified rehabilitation expenditures may sell or assign all or part of the tax credit that may be claimed for such costs and expenses to one or more entities, but no further sale or assignment of any credit previously sold or assigned pursuant to this subparagraph shall be allowed. All such transfers shall be subject to the maximum total limits provided by subsection (c) of this Code section;

(B) A taxpayer who sells or assigns a credit under this Code section and the entity to which the credit is sold or assigned shall jointly submit written notice of the sale or assignment to the department not later than 30 days after the date of the sale or assignment. The notice must include:

(i) The date of the sale or assignment;

(ii) The amount of the credit sold or assigned;

(iii) The names and federal tax identification numbers of the entity that sold or assigned the credit or part of the credit and the entity to which the credit or part of the credit was sold or assigned; and

(iv) The amount of the credit owned by the selling or assigning entity before the sale or assignment and the amount the selling or assigning entity retained, if any, after the sale or assignment;

(C) The sale or assignment of a credit in accordance with this Code section does not extend the period for which a credit may be carried forward and does not increase the total amount of the credit that may be claimed. After an entity claims a credit for eligible costs and expenses, another entity may not use the same costs and expenses as the basis for claiming a credit; and

(D) Notwithstanding the requirements of this subsection, a credit earned or purchased by, or assigned to, a partnership, limited liability company, Subchapter "S" corporation, or other pass-through entity may be allocated to the partners, members, or shareholders of that entity and claimed under this Code section in accordance with the provisions of any agreement among the partners, members, or shareholders of that entity and without regard to the ownership interest of the partners, members, or shareholders in the rehabilitated certified structure, provided that the entity or person that claims the credit must be subject to Georgia tax.

(E) Only a taxpayer who earned a credit, and no subsequent good faith transferee, shall be responsible in the event of a recapture, reduction, disallowance, or other failure related to such credit.

(3) No such credit shall be allowed the taxpayer against prior years' tax liability.

(f) In the case of any rehabilitation which may reasonably be expected to be completed in phases set forth in architectural plans and specifications completed before the rehabilitation begins, a 60 month period may be substituted for the 24 month period provided for in paragraph (5) of subsection (a) of this Code section.

(g)(1) Except as otherwise provided in subsection (h) of this Code section, in the event a tax credit under this Code section has been claimed and allowed the taxpayer, upon the sale or transfer of the certified structure, the taxpayer shall be authorized to transfer the remaining unused amount of such credit to the purchaser of such certified structure. If a historic home for which a certified rehabili-

tation has been completed by a nonprofit corporation is sold or transferred, the full amount of the credit to which the nonprofit corporation would be entitled if taxable shall be transferred to the purchaser or transferee at the time of sale or transfer.

(2) Such purchaser shall be subject to the limitations of subsection (e) of this Code section. Such purchaser shall file with such purchaser's tax return a copy of the approval of the rehabilitation by the Department of Natural Resources as provided in subsection (d) and a copy of the form evidencing the transfer of the tax credit.

(3) Such purchaser shall be entitled to rely in good faith on the information contained in and used in connection with obtaining the approval of the credit including, without limitation, the amount of qualified rehabilitation expenditures.

(h)(1) If an owner other than a nonprofit corporation sells a historic home within three years of receiving the credit, the seller shall recapture the credit to the Department of Revenue as follows:

(A) If the property is sold within one year of receiving the credit, the recapture amount will equal the lesser of the credit or the net profit of the sale;

(B) If the property is sold within two years of receiving the credit, the recapture amount will equal the lesser of two-thirds of the credit or the net profit of the sale; or

(C) If the property is sold within three years of receiving the credit, the recapture amount will equal the lesser of one-third of the credit or the net profit of the sale.

(2) The recapture provisions of this subsection shall not apply to a sale resulting from the death of the owner.

(i)(1) (For effective date, see note.) In the event that a taxpayer claims the tax credit under paragraph (2) of subsection (b) of this Code section and leases such certified structure, the department shall aggregate all total sales tax receipts from the certified structure.

(2) Any taxpayer claiming credits under paragraph (2) of subsection (b) of this Code section shall report to the department the average full-time employees employed at the certified structure. A full-time employee for the purposes of this Code section shall mean a person who works a job that requires 30 or more hours per week. Such reports must be submitted to the department for five calendar years following the year in which the credit is claimed by the taxpayer.

(3) In the event that a taxpayer claims the tax credit under paragraph (2) of subsection (b) of this Code section and leases such

certified structure, the department shall aggregate all total full-time employees at the certified structure.

(j) (For effective date, see note.) Notwithstanding Code Sections 48-2-15, 48-7-60, and 48-7-61, the department shall furnish a report to the chairperson of the House Committee on Ways and Means and the chairperson of the Senate Finance Committee by June 30 of each year. Such report shall contain the total sales tax collected in the prior calendar year and the average number of full-time employees at the certified structure and the total value of credits claimed for each taxpayer claiming credits under paragraph (2) of subsection (b) of this Code section.

(k) (For effective date, see note.) The tax credit allowed under paragraph (1) of subsection (b) of this Code section, and any recaptured tax credit, shall be allocated among some or all of the partners, members, or shareholders of the entity owning the project in any manner agreed to by such persons, whether or not such persons are allocated or allowed any portion of any other tax credit with respect to the project.

(l) The Department of Natural Resources and the Department of Revenue shall prescribe such regulations as may be appropriate to carry out the purposes of this Code section.

(m) The Department of Natural Resources shall report, on an annual basis, on the overall economic activity, usage, and impact to the state from the rehabilitation of eligible properties for which credits provided by this Code section have been allowed. (Code 1981, § 48-7-29.8, enacted by Ga. L. 2002, p. 954, § 1; Ga. L. 2008, p. 1179, §§ 1, 2/HB 851; Ga. L. 2015, p. 1340, § 1/HB 308.)

Delayed effective date. — For version of this Code section effective until January 1, 2016, see the bound volume.

The 2015 amendment, effective January 1, 2016, rewrote this Code section. See editor's note for applicability.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2015, "the" was inserted preceding "House Committee" in subsection (j).

Editor's notes. — Ga. L. 2015, p. 1340, § 2/HB 308, not codified by the General Assembly, provides that: "The amendments enacted in this Act shall take effect on January 1, 2016, and shall be applicable to certified rehabilitations completed on or after January 1, 2017, and shall stand repealed on December 31, 2021, unless otherwise modified by the General Assembly. In the event the amendments provided for in this Act are repealed, the provisions of Code Section 48-7-29.8 as they existed prior to this Act shall remain in full force and effect."

48-7-29.12. Tax credit for qualified donation of real property; carryover of credit; appraisals; transfer of credit; penalty.

(a) As used in this Code section, the term:

(1) "Conservation easement" means a nonpossessory interest in real property imposing limitations or affirmative obligations, the purposes of which are consistent with at least two conservation purposes.

(2) "Conservation purpose" means any of the following:

(A) Water quality protection for wetlands, rivers, streams, or lakes;

(B) Protection of wildlife habitat consistent with state wildlife conservation policies;

(C) Protection of outdoor recreation consistent with state outdoor recreation policies;

(D) Protection of prime agricultural or forestry lands; and

(E) Protection of cultural sites, heritage corridors, or archeological and historic resources.

(3) "Donated property" means the real property of which a qualified donation is made pursuant to this Code section.

(4) "Eligible donor" means any person who owns an interest in a qualified donation.

(5) "Fair market value" means the value of the donated property as determined pursuant to subsections (c.1) and (c.2) of this Code section.

(6) "Qualified donation" means the fee simple conveyance to the state; a county, a municipality, or a consolidated government of this state; the federal government; or a bona fide charitable nonprofit organization qualified under the Internal Revenue Code and, beginning on January 1, 2014, accredited by the Land Trust Accreditation Commission of 100 percent of all right, title, and interest in the entire parcel of donated real property, and the donation is accepted by such state, county, municipality, consolidated government, federal government, or bona fide charitable nonprofit organization for use in a manner consistent with at least two conservation purposes. Such term shall also include the donation to and acceptance by the state; a county, a municipality, or a consolidated government of this state; the federal government; or a bona fide charitable nonprofit organization qualified under the Internal Revenue Code and, beginning on January 1, 2014, accredited by the Land Trust Accreditation Commission of a conservation easement. Any real property which is otherwise required to be dedicated pursuant to local government regulations or ordinances or to increase building density levels shall not be eligible as a qualified donation under this Code section. Any real property which is used for or associated with the playing of golf or is planned

to be so used or associated shall not be eligible as a qualified donation under this Code section.

(7) "Related person" has the meaning provided by Code Section 48-7-28.3.

(8) "Substantial valuation misstatement" means a valuation such that the claimed value of any property on the appraisal as submitted to the State Properties Commission is 150 percent or more of the amount determined to be the correct amount of such valuation pursuant to subsections (c.1) and (c.2) of this Code section.

(b)(1) A taxpayer shall be allowed a state income tax credit against the tax imposed by Code Section 48-7-20 or 48-7-21 for each qualified donation under this Code section.

(2) Except as otherwise provided in paragraph (3) of this subsection and in subsection (d) of this Code section, such credit shall be limited to an amount not to exceed the lesser of $500,000.00, 25 percent of the fair market value of the donated real property as fair market value is established for the year in which the donation occurred, or 25 percent of the difference between the fair market value and the amount paid to the donor if the donation is effected by a sale of property for less than fair market value as established for the year in which the donation occurred.

(3) Except as otherwise provided in subsection (d) of this Code section, in the case of a taxpayer whose net income is determined under Code Section 48-7-23, the aggregate total credit allowed to all partners in a partnership shall be limited to an amount not to exceed the lesser of $500,000.00, 25 percent of the fair market value of the donated real property as fair market value is established for the year in which the donation occurred, or 25 percent of the difference between the fair market value and the amount paid to the donor if the donation is effected by a sale of property for less than fair market value as established for the year in which the donation occurred.

(c) No tax credit shall be allowed under this Code section unless the taxpayer files with the taxpayer's income tax return a copy of the State Property Commission's determination and a copy of a certification issued by the Department of Natural Resources that the donated property is suitable for conservation purposes and meets the following additional requirements, where applicable:

(1) Subdivision is prohibited for a donated property of less than 500 acres and limited to one subdivision for a donated property of 500 acres or more;

(2) New construction on donated property of structures, roads, impoundments, ditches, dumping, or any other activity that would

harm the protected conservation values of such donation is prohibited on such property;

(3) New construction on donated property within 150 feet of any perennial or intermittent stream is prohibited;

(4) A buffer of at least 100 feet on each side of any perennial streams on donated property which ensures at least 75 percent tree canopy evenly distributed after harvest is maintained and a buffer of at least 50 feet on each side of any intermittent streams on donated property which ensures at least 75 percent tree canopy evenly distributed after harvest is maintained;

(5) Timber and agricultural activities undertaken on the donated property are prohibited unless in accordance with best management practices published by the State Forestry Commission or the Soil and Water Conservation Commission, as the case may be;

(6) New construction on donated property causing more than 1 percent of such property's total surface area to be covered by impervious surfaces is prohibited;

(7) Mining on the property is prohibited; and

(8) Planting on the donated property of non-native invasive species listed in Category 1, Category 1 Alert, or Category 2 of the "List of Non-Native Invasive Plants in Georgia" developed by the Georgia Exotic Pest Council is prohibited.

(c.1) For each application for certification, the Department of Natural Resources shall require submission of an appraisal of the qualified donation by the taxpayer along with a nonrefundable $5,000.00 application fee; provided, however, that the nonrefundable application fee for property donated to the state shall be 1 percent of the total value of the donation, unless such donation is being made to qualify the state for a federal or state grant. The appraisal required by this subsection shall be a full narrative appraisal and include:

(1) A certification page, as established by the Uniform Standards of Professional Appraisal Practice, signed by the appraiser; and

(2) An affidavit signed by the appraiser which includes a statement specifying:

(A) The value of the unencumbered property, the total value of the qualified donation in gross, and an accompanying statement identifying the methods used to determine such values;

(B) Whether a subdivision analysis was used in the appraisal;

(C) Whether the landowner or related persons own any other property, the value of which is increased as a result of the donation; and

(D) That the appraiser is certified pursuant to Chapter 39A of Title 43.

Appraisals received by the Department of Natural Resources shall be forwarded to the State Properties Commission for review. The State Properties Commission shall approve the appraisal amount submitted or recommend a lower amount based on its review and inform the Department of Natural Resources of its determination. The State Properties Commission shall be authorized to promulgate any rules and regulations necessary to administer the provisions of this subsection. Any appraisal deemed to contain a substantial valuation misstatement shall be submitted to the Georgia Real Estate Commission for further investigation and disciplinary action. Upon receipt of the State Properties Commission's determination, the Department of Natural Resources may proceed with the certification process.

(c.2) The Board of Natural Resources shall promulgate any rules and regulations necessary to implement and administer subsections (c) and (c.1) of this Code section. A final determination by the Department of Natural Resources or the State Properties Commission shall be subject to review and appeal under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(d)(1) In no event shall the total amount of any tax credit under this Code section for a taxable year exceed the taxpayer's income tax liability. In no event shall the total amount of the tax credit allowed to a taxpayer under subsection (b) of this Code section exceed $250,000.00 with respect to tax liability determined under Code Section 48-7-20 or $500,000.00 with respect to tax liability determined under Code Section 48-7-21. Any unused tax credit shall be allowed to be carried forward to apply to the taxpayer's succeeding ten years' tax liability. However, the amount in excess of such annual dollar limits shall not be eligible for carryover to the taxpayer's succeeding years' tax liability nor shall such excess amount be claimed by or reallocated to any other taxpayer. No such tax credit shall be allowed the taxpayer against prior years' tax liability.

(2) Only one qualified donation may be made with respect to any real property that was, in the five years prior to donation, within the same tax parcel of record, except that a subsequent donation may be made by a person who is not a related person with respect to any prior eligible donors of any portion of such tax parcel.

(3) Beginning on January 1, 2016, the aggregate amount of tax credits allowed under this Code section shall not exceed $30 million per calendar year. The Department of Natural Resources shall accept no new applications for the tax credits allowed under this Code section after December 31, 2016.

(d.1) Any tax credits under this Code section earned by a taxpayer in the taxable years beginning on or after January 1, 2013, and previously claimed but not used by such taxpayer against such taxpayer's income tax may be transferred or sold in whole or in part by such taxpayer to another Georgia taxpayer, subject to the following conditions:

(1) The transferor may make only a single transfer or sale of tax credits earned in a taxable year; however, the transfer or sale may involve one or more transferees;

(2) The transferor shall submit to the department a written notification of any transfer or sale of tax credits within 30 days after the transfer or sale of such tax credits. The notification shall include such transferor's tax credit balance prior to transfer, the remaining balance after transfer, all tax identification numbers for each transferee, the date of transfer, the amount transferred, and any other information required by the department;

(3) Failure to comply with this subsection shall result in the disallowance of the tax credit until the taxpayer is in full compliance;

(4) Any unused credit may be carried forward to subsequent taxable years provided that the transfer or sale of this tax credit does not extend the time in which such tax credit can be used. The carry-forward period for tax credit that is transferred or sold shall begin on the date on which the tax credit was originally earned; and

(5) A transferee shall have only such rights to claim and use the tax credit that were available to the transferor at the time of the transfer. To the extent that such transferor did not have rights to claim and use the tax credit at the time of the transfer, the department shall either disallow the tax credit claimed by the transferee or recapture the tax credit from the transferee. The transferee's recourse is against the transferor.

(e)(1) Whenever:

(A) Any person prepares an appraisal of the value of property and knows, or reasonably should have known, that the appraisal would be used in connection with a return or a claim for refund claiming a tax credit under this Code section; and

(B) The claimed value of the property on such appraisal as submitted to the State Properties Commission results in a substantial valuation misstatement with respect to such property for purposes of claiming a tax credit under this Code section,

then such person shall pay a penalty in the amount determined under paragraph (2) of this subsection.

(2) The amount of the penalty imposed under paragraph (1) of this subsection on any person with respect to an appraisal shall be equal to the lesser of:

(A) The greater of:

(i) Twenty-five percent of the difference between the amount of the tax credit claimed on the taxpayer's return or claim for refund and the amount of the tax credit to which the taxpayer is actually entitled, to the extent the difference is attributable to the misstatement described in paragraph (1) of this subsection; or

(ii) Ten thousand dollars; or

(B) One hundred twenty-five percent of the gross income received by the person described in paragraph (1) of this subsection for the preparation of the appraisal.

(3) No penalty shall be imposed under paragraph (1) of this subsection if the person establishes to the satisfaction of the commissioner that the value established in the appraisal was more likely than not the proper value.

(4) Except as otherwise provided, the penalty provided by this subsection shall be in addition to any other penalties provided by law. The amount of any penalty under this subsection shall be assessed within three years after the return or claim for refund with respect to which the penalty is assessed was filed, and no proceeding in court without assessment for the collection of such penalty shall be begun after the expiration of such period. Any claim for refund of an overpayment of the penalty assessed under this subsection shall be filed within three years from the time the penalty was paid.

(f) No credit shall be allowed under this Code section with respect to any amount deducted from taxable net income by the taxpayer as a charitable contribution.

(g) The commissioner shall promulgate any rules and regulations necessary to implement and administer this Code section. (Code 1981, § 48-7-29.12, enacted by Ga. L. 2006, p. 351, § 1/HB 1107; Ga. L. 2008, p. 101, § 1/HB 1274; Ga. L. 2011, p. 297, § 3/HB 346; Ga. L. 2012, p. 257, § 3-1/HB 386; Ga. L. 2013, p. 141, § 48/HB 79; Ga. L. 2015, p. 370, § 3/HB 464.)

The 2015 amendment, effective July 1, 2015, added paragraph (d)(3).

48-7-29.18. Tax credit for purchasers of alternative fuel for heavy duty and medium duty vehicles.

(a) As used in this Code section, the term:

(1) "Affiliated entity" means a person or business entity that is a member of the taxpayer's affiliated group within the meaning of Section 1504(a) of the Internal Revenue Code.

(2) "Alternative fuel" means electricity, liquid petroleum gas, natural gas, or hydrogen fuel. The term does not include hybrid electric drives unless the vehicle has a gross weight equal to or greater than 8,500 pounds and less than 26,000 pounds.

(3) "Alternative fuel heavy-duty vehicle" means a new commercial vehicle, with a gross vehicle weight ratio equal to or more than 26,001 pounds, that is primarily fueled by an alternative fuel. As used in this paragraph, "primarily fueled by an alternative fuel" means a vehicle that is produced by an original equipment manufacturer and operates on 90 percent or more alternative fuel and on 10 percent or less gasoline or diesel fuel. In order to qualify for a tax credit under this Code section, the vehicle shall be registered in Georgia and be certified by the Department of Natural Resources as meeting all requirements set forth in paragraph (1) of subsection (a) of Code Section 48-7-29.19.

(4) "Alternative fuel medium-duty vehicle" means a new commercial vehicle, with a gross vehicle weight ratio equal to 8,500 pounds or more and less than 26,001 pounds, that is solely fueled by an alternative fuel and that is produced by an original equipment manufacturer. In order to qualify for a tax credit under this Code section, the vehicle shall be registered in Georgia and be certified by the Department of Natural Resources as meeting all requirements set forth in paragraph (1) of subsection (a) of Code Section 48-7-29.19.

(5) "New commercial vehicle" means a new commercial vehicle that: (A) is manufactured by an original equipment manufacturer, or (B) is manufactured by an original equipment manufacturer and any third-party equipment manufacturers, provided that such third-party manufacturers provide such parts or services prior to the original sale of such vehicle to a purchaser, and all vehicle components, including the alternative fuel system, are covered by the original equipment manufacturer or covered under separate warranties by the original equipment manufacturer and the third-party equipment manufacturer that together provide warranty for the complete vehicle.

(6) "Taxpayer" means any person or business entity required by law to file a return or to pay taxes.

(b)(1) A taxpayer shall be allowed a credit against tax imposed under this article for the amount expended on or after July 1, 2015, and before June 30, 2017, to purchase an alternative fuel heavy-duty vehicle not to exceed $20,000.00 per vehicle.

(2) A taxpayer shall be allowed a credit against tax imposed under this article for the amount expended on or after July 1, 2015, and before June 30, 2017, to purchase an alternative fuel medium-duty vehicle not to exceed $12,000.00 per vehicle.

(c) The tax credits allowed under this Code section shall be limited to $2.5 million in each fiscal year beginning with fiscal year 2016 and ending with fiscal year 2017.

(d) In no event shall the total amount of any tax credit under this Code section for a taxpayer or an affiliated entity for a taxable year exceed the lesser of (i) a taxpayer's income tax liability, or (ii) $250,000.00. No unused portion of such tax credit shall be allowed the taxpayer or an affiliated entity against succeeding years' tax liabilities. No such credit shall be allowed the taxpayer or an affiliated entity against prior years' tax liabilities. The tax credit provided for in this Code section shall not apply to any vehicle for which the taxpayer or an affiliated entity has applied for and received a tax credit as set forth in Code Section 48-7-40.16.

(e) The commissioner shall be authorized to promulgate any rules and regulations necessary to implement and administer the provisions of this Code section. (Code 1981, § 48-7-29.18, enacted by Ga. L. 2014, p. 14, § 1/HB 348.)

Effective date. — This Code section became effective April 4, 2014. See editor's note for applicability.

Editor's notes. — Ga. L. 2014, p. 14, § 2/HB 348, not codified by the General Assembly, provides that the 2014 amendment shall be applicable to all taxable years beginning on or after January 1, 2015.

48-7-29.19. Procedures, conditions, and limitations on amount of tax credits for purchasers of alternative fuel vehicles.

(a) A taxpayer seeking to claim a tax credit under the provisions of Code Section 48-7-29.18 shall submit an application to the commissioner for preapproval of such tax credit. Before any such application for such tax credit is filed, the applicant shall have completed the purchase and shall have registered the qualified vehicle or vehicles in this state. The application shall include:

(1) Certification from the Department of Natural Resources that the vehicle is an alternative fuel heavy-duty vehicle, or alternative fuel medium-duty vehicle, as defined in Code Section 48-7-29.18;

(2) A sworn affidavit from the taxpayer certifying that the vehicle shall accumulate at least 75 percent of its mileage in Georgia in each year for a five-year period, that is registered in Georgia and shall remain registered in Georgia for no less than five years; and

(3) Any other information requested by the commissioner pursuant to a rule or regulation promulgated hereunder. The commissioner shall create and make available the forms to be used for such applications. Within 60 days of receipt of a properly completed application, the commissioner shall preapprove the application if a sufficient amount of available tax credits remain.

(b) The commissioner shall preapprove the tax credits based on the order in which properly completed applications were submitted. In the event that two or more applications were submitted on the same day and the amount of funds available will not be sufficient to fully fund the tax credits requested, the commissioner shall prorate the available funds between or among the applicants.

(c) In no event shall the aggregate amount of the tax credits preapproved by the commissioner for all taxpayers under the provisions of this Code section exceed the amounts specified in subsection (c) of Code Section 48-7-29.18.

(d) The commissioner shall be authorized to promulgate any rules and regulations necessary to implement and administer the provisions of this Code section, including provisions for repayment of any credit in the event any of the certifications of paragraph (2) of subsection (a) of this Code section are or become untrue during the five-year period following the date of application. (Code 1981, § 48-7-29.19, enacted by Ga. L. 2014, p. 14, § 1/HB 348.)

Effective date. — This Code section became effective April 4, 2014. See editor's note for applicability.

Editor's notes. — Ga. L. 2014, p. 14, § 2/HB 348, not codified by the General Assembly, provides that the 2014 amendment shall be applicable to all taxable years beginning on or after January 1, 2015.

48-7-40.1. Tax credits for business enterprises in less developed areas.

(a) As used in this Code section, the term:

(1) "Broadcasting" means the transmission or licensing of audio, video, text, or other programming content to the general public, subscribers, or to third parties via radio, television, cable, satellite, or the Internet or Internet Protocol and includes motion picture and sound recording, editing, production, postproduction, and distribution. "Broadcasting" is limited to establishments classified under the 2007 North American Industry Classification System Codes 515,

broadcasting; 519, Internet publishing and broadcasting; 517, telecommunications; and 512, motion picture and sound recording industries.

(2) "Business enterprise" means any business or the headquarters of any such business which is engaged in manufacturing, including, but not limited to, the manufacturing of alternative energy products for use in solar, wind, battery, bioenergy, biofuel, and electric vehicle enterprises, warehousing and distribution, processing, telecommunications, broadcasting, tourism, biomedical manufacturing, and research and development industries. Such term shall not include retail businesses. Businesses are eligible for the tax credit provided by this Code section at an individual establishment of the business based on the classification of the individual establishment under the North American Industry Classification System. For purposes of this Code section, the term "establishment" means an economic unit at a single physical location where business is conducted or where services or industrial operations are performed. If more than one business activity is conducted at the establishment, then only those jobs engaged in the qualifying activity will be eligible for the tax credit provided by this Code section.

(b) Not later than December 31 of each year, using the most current data available from the Department of Labor and the United States Department of Commerce, the commissioner of community affairs shall rank and designate as less developed areas the areas composed of ten or more contiguous census tracts in this state using a combination of the following equally weighted factors:

(1) Highest unemployment rate for the most recent 36 month period;

(2) Lowest per capita income for the most recent 36 month period; and

(3) Highest percentage of residents whose income is below the poverty level according to the most recent data available.

(c) The commissioner of community affairs, and the commissioner of economic development in areas qualifying under the provisions of paragraphs (1), (3), and (4) of this subsection, also shall be authorized to include in the designation provided for in subsection (b) of this Code section:

(1) Any area composed of ten or more contiguous census tracts which, in the opinion of the commissioner of community affairs and the commissioner of economic development, undergoes a sudden and severe period of economic distress caused by the closing of one or more business enterprises located in such area;

(2) Any area composed of one or more census tracts adjacent to a federal military installation where pervasive poverty is evidenced by a 15 percent poverty rate or greater as reflected in the most recent decennial census; provided, however, that the subsequent redrawing or alteration of census tracts in a manner which results in an area no longer being in a census tract adjacent to a federal military installation shall not disqualify an area which has previously qualified under this paragraph if the area continues to have pervasive poverty as described in this paragraph;

(3) Any area composed of one or more contiguous census tracts which, in the opinion of the commissioner of community affairs and the commissioner of economic development, is or will be adversely impacted by the loss of one or more jobs, businesses, or residences as a result of an airport expansion, including noise buy-outs, or the closing of a business enterprise which, in the opinion of the commissioner of community affairs and the commissioner of economic development, results or will result in a sudden and severe period of economic distress; or

(4) Any area which is within or adjacent to one or more contiguous census block groups with a poverty rate of 15 percent or greater as determined from data in the most current United States decennial census, where the area is also included within a state enterprise zone pursuant to Chapter 88 of Title 36 or where a redevelopment plan has been adopted pursuant to Chapter 61 of Title 36 and which, in the opinion of the commissioner of community affairs and the commissioner of economic development, displays pervasive poverty, underdevelopment, general distress, and blight.

No designation made pursuant to this subsection shall operate to displace or remove any other area previously designated as a less developed area. Notwithstanding any provision of this Code section to the contrary, in areas designated as suffering from pervasive poverty under this subsection, job tax credits shall be allowed as provided in this Code section, in addition to business enterprises, to any lawful business.

(d) For business enterprises which plan a significant expansion in their labor forces, the commissioner of community affairs shall prescribe redesignation procedures to ensure that the business enterprises can claim credits in future years without regard to whether or not a particular area is removed from the list of less developed areas.

(e) Business enterprises in areas designated by the commissioner of community affairs as less developed areas shall be allowed a job tax credit for taxes imposed under this article equal to $3,500.00 annually per eligible new full-time employee job for five years beginning with the

first taxable year in which the new full-time employee job is created and for the four immediately succeeding taxable years; provided, however, that where the amount of such credit exceeds a business enterprise's liability for such taxes in a taxable year, the excess may be taken as a credit against such business enterprise's quarterly or monthly payment under Code Section 48-7-103 but not to exceed in any one taxable year $3,500.00 for each new full-time employee job when aggregated with the credit applied against taxes under this article. Each employee whose employer receives credit against such business enterprise's quarterly or monthly payment under Code Section 48-7-103 shall receive credit against his or her income tax liability under Code Section 48-7-20 for the corresponding taxable year for the full amount which would be credited against such liability prior to the application of the credit provided for in this subsection. Credits against quarterly or monthly payments under Code Section 48-7-103 and credits against liability under Code Section 48-7-20 established by this subsection shall not constitute income to the taxpayer. The number of new full-time jobs shall be determined by comparing the monthly average number of full-time employees subject to Georgia income tax withholding for the taxable year with the corresponding period of the prior taxable year. Only those business enterprises that increase employment by five or more in a less developed area shall be eligible for the credit; provided, however, that within areas of pervasive poverty as designated under paragraphs (2) and (4) of subsection (c) of this Code section businesses shall only have to increase employment by two or more jobs in order to be eligible for the credit, provided that, if a business only increases employment by two jobs, the persons hired for such jobs shall not be married to one another. The average wage of the new jobs created must be above the average wage of the county that has the lowest wage of any county in the state to qualify as reported in the most recently available annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor. To qualify for a credit under this subsection, the employer must make health insurance coverage available to the employee filling the new full-time job; provided, however, that nothing in this subsection shall be construed to require the employer to pay for all or any part of health insurance coverage for such an employee in order to claim the credit provided for in this subsection if such employer does not pay for all or any part of health insurance coverage for other employees. Credit shall not be allowed during a year if the net employment increase falls below five or two, as applicable. The state revenue commissioner shall adjust the credit allowed each year for net new employment fluctuations above the minimum level of five or two.

(f) Tax credits for five years for the taxes imposed under this article shall be awarded for additional new full-time employee jobs created by business enterprises qualified under subsection (b) or (c) of this Code

section. Additional new full-time employee jobs shall be determined by subtracting the highest total employment of the business enterprise during years two through five, or whatever portion of years two through five which has been completed, from the total increased employment. The state revenue commissioner shall adjust the credit allowed in the event of employment fluctuations during the additional five years of credit.

(g) The sale, merger, acquisition, or bankruptcy of any business enterprise shall not create new eligibility in any succeeding business entity, but any unused job tax credit may be transferred and continued by any transferee of the business enterprise. The commissioner of community affairs shall determine whether or not qualifying net increases or decreases have occurred and may require reports, promulgate regulations, and hold hearings as needed for substantiation and qualification.

(h) Any credit claimed under this Code section but not used in any taxable year may be carried forward for ten years from the close of the taxable year in which the qualified jobs were established, subject to forfeiture as provided in subsection (e) of this Code section, but the credit established by this Code section taken in any one taxable year shall be limited to an amount not greater than 100 percent of the taxpayer's state income tax liability which is attributable to income derived from operations in this state for that taxable year.

(i) Notwithstanding Code Section 48-2-35, any tax credit claimed under this Code section shall be claimed within one year of the earlier of the date the original tax return was filed or the date such return was due as prescribed in subsection (a) of Code Section 48-7-56, including any approved extensions.

(j) Taxpayers that initially claimed the credit under this Code section for any taxable year beginning before January 1, 2012, shall be governed, for purposes of all such credits claimed as well as any credits claimed in subsequent taxable years related to such initial claim, by this Code section as it was in effect for the taxable year in which the taxpayer made such initial claim. (Code 1981, § 48-7-40.1, enacted by Ga. L. 1993, p. 1649, § 2; Ga. L. 1994, p. 928, § 3; Ga. L. 1996, p. 220, §§ 3, 4; Ga. L. 1997, p. 461, § 2; Ga. L. 2000, p. 605, § 2; Ga. L. 2001, p. 984, § 8; Ga. L. 2004, p. 939, § 1; Ga. L. 2008, p. 874, § 2/HB 1246; Ga. L. 2008, p. 1152, § 1/HB 1273; Ga. L. 2009, p. 654, § 2/HB 439; Ga. L. 2012, p. 1309, § 2/HB 868; Ga. L. 2013, p. 141, § 48/HB 79; Ga. L. 2013, p. 677, § 2/SB 137; Ga. L. 2014, p. 204, § 1/HB 791.)

The 2014 amendment, effective April 15, 2014, added the proviso at the end of paragraph (c)(2).

48-7-40.10. [Effective until December 31, 2016] Tax credit for water conservation facilities and qualified water conservation investment property.

(a) As used in this Code section, the term:

(1) "Machinery and equipment" means all tangible personal property used directly in a minimum 10 percent reduction in permit by relinquishment or transfer of annual permitted water usage from existing permitted ground-water sources.

(2) "Qualified water conservation investment" means all spending by a taxpayer for use in this state for the modification of existing manufacturing processes, for the construction of a new water conservation facility, or for the expansion of an existing water conservation facility provided that such modification, construction, or expansion results in a minimum 10 percent reduction in permit by relinquishment or transfer of annual permitted water usage from existing permitted ground-water sources and has been certified pursuant to rules and regulations promulgated by the Department of Natural Resources as necessary to promote its ground-water management efforts for areas with a multiyear record of consumption at, near, or above sustainable use signaled by declines in ground-water pressure, threats of salt-water intrusion, need to develop alternate sources to accommodate economic growth and development, or any other indication of growing inadequacy of the existing resource.

(3) "Water conservation" means a minimum 10 percent reduction in permit by relinquishment or transfer of annual permitted water usage from existing permitted ground-water sources due to increased efficiencies or recycling of water which results in reduced ground-water usage, or a change from a ground-water source to a surface-water source or an alternate source.

(4) "Water conservation facility" means any facility, buildings, and machinery and equipment used in the water conservation process resulting in a minimum 10 percent reduction in permit by relinquishment or transfer of annual permitted water usage from existing ground-water sources, provided that up to 10 percent of any building that is a component of a water conservation facility may be used for office space to house support staff for the operation.

(b) Any taxpayer who financially participates in qualified water conservation investment in this state shall be allowed a credit against the tax imposed under this article in the taxable year following that in which the modified manufacturing process or the new or expanded water conservation facility has been placed in service and in which the taxpayer has initiated a minimum 10 percent reduction in permit by

relinquishment or transfer of annual permitted water usage from existing permitted ground-water sources. This credit shall have a maximum carry forward of ten years, provided that such property remains in service, that the reduction in permit is maintained, and that the property continues to be used by the taxpayer. The amount of the credit allowed under this Code section shall be a percentage of the taxpayer's qualified water conservation investment. For projects of $50,000.00 to $499,999.00, the credit for such taxpayer shall be 10 percent; for projects of $500,000.00 to $799,999.00, the credit shall be 8 percent; for projects of $800,000.00 to $999,999.00, the credit shall be 6 percent; and for projects of $1 million or more, the credit shall be 5 percent. The amount of the credit which may be used in any tax year shall not exceed 50 percent of that year's tax liability as determined without regard to any other credits.

(c) The credit granted under subsection (b) of this Code section shall be subject to the following conditions and limitations:

(1) In order to qualify as a basis for the credit, the modified manufacturing process or the new or expanded water conservation facility must not be placed in service before January 1, 1997. The credit may be only taken with respect to qualified water conservation investment in a project costing $50,000.00 or more. For every year in which the taxpayer claims the credit, the taxpayer shall attach a schedule to the taxpayer's income tax return setting forth as a minimum the following information:

(A) The amounts, dates, and nature of the qualified water conservation investments which have allowed a modified manufacturing process or a new or expanded water conservation facility to be placed in service in the prior taxable year;

(B) The amount and date of reduction in permitted ground-water usage occurring as a result of this investment;

(C) The amount of tax credit claimed for these investments for the current taxable year;

(D) The amounts of qualified water conservation investment reported for tax years preceding the prior taxable year;

(E) The amounts of tax credit which have been utilized in prior taxable years;

(F) The amounts of tax credit which has been carried over from prior years;

(G) The amounts of tax credit allowed under this Code section being utilized by the taxpayer in the current taxable year; and

(H) The amounts of tax credit to be carried over to subsequent years;

(2) In the initial year in which the taxpayer claims the credit granted in subsection (b) of this Code section, the taxpayer shall include in the description of the project required by subparagraph (A) of paragraph (1) of this subsection information which demonstrates that the project completed with the qualified water conservation investment had an aggregate cost of $50,000.00 or more. The taxpayer shall also include a copy of the certification by the Department of Natural Resources under paragraph (2) of subsection (a) of this Code section;

(3) Any lease for a period of five years or longer of any real or personal property resulting from qualified water conservation investment shall be treated as qualified water conservation investment by the lessee. The taxpayer may treat the full value of the leased property as qualified water conservation investment in the taxable year in which the lease becomes binding on the lessor and the taxpayer if all other conditions of this subsection have been met;

(4) The utilization of the credit granted in this Code section shall have no effect on the taxpayer's ability to claim depreciation for tax purposes on assets acquired by the taxpayer, nor shall the credit have any effect on the taxpayer's basis in such assets for the purpose of depreciation; and

(5) If, after receiving approval for the water conservation credit, the annual permit for water usage from the same ground-water source is increased, any unused credits will expire immediately.

(d) This Code section shall stand repealed on December 31, 2016. (Code 1981, § 48-7-40.10, enacted by Ga. L. 1996, p. 1025, § 1; Ga. L. 2002, p. 415, § 48; Ga. L. 2015, p. 370, § 1/HB 464.)

The 2015 amendment, effective July 1, 2015, added subsection (d).

48-7-40.11. [Effective until December 31, 2016] Tax credit for shift from ground-water usage.

(a) As used in this Code section, the term:

(1) "Qualified water conservation facility" means any facility including buildings, machinery, and equipment used in the water conservation process provided:

(A) The use of the facility results in reduced ground-water usage or utilizes a surface-water source; and

(B) The use of the facility has been certified by the Department of Natural Resources as necessary to promote its ground-water management efforts for areas with a multiyear record of consump-

tion at, near, or above sustainable use signaled by declines in ground-water pressure, threats of salt-water intrusion, need to develop alternate sources to accommodate economic growth and development, or any other indication of growing inadequacy of the existing resource.

(2) "Shift from ground-water usage" means a minimum 10 percent transfer of annual permitted ground-water usage from ground-water sources due to the purchase of water from a qualified water conservation facility.

(b) In the case of a taxpayer which first shifts from ground-water usage during a taxable year, there shall be allowed an annual credit against the tax imposed under this article starting in the fourth taxable year following the taxable year in which the shift from ground-water usage occurs. The amount of the credit shall be computed as follows:

(1) The amount of the credit allowed under this Code section shall be $.0001 per gallon of the total gallons of relinquished and transferred annual ground-water permit issued after July 1, 1996; and

(2) The amount of the credit which may be used in any tax year shall not exceed 50 percent of that year's tax liability as determined without regard to other credits.

(c) The credit granted under this Code section shall be subject to the following conditions and limitations:

(1) For every year in which the taxpayer claims the credit, the taxpayer shall attach a schedule to the taxpayer's income tax return setting forth as a minimum the following information:

(A) The ground-water usage permitted the taxpayer in the first permit issued after July 1, 1996;

(B) The ground-water usage permitted the taxpayer in the tax year four years earlier than the current tax year;

(C) The ground-water usage permitted the taxpayer in the current year; and

(D) The credit utilized by the taxpayer in the current year;

(2) In the initial year in which the taxpayer claims the credit granted in subsection (b) of this Code section, the taxpayer shall include a copy of the certification by the Department of Natural Resources under subparagraph (a)(1)(B) of this Code section; and

(3) If, after receiving approval for the water conservation credit, the annual permit for water usage from the same ground-water source is increased, eligibility to use such credits shall expire immediately.

(d) This Code section shall stand repealed on December 31, 2016. (Code 1981, § 48-7-40.11, enacted by Ga. L. 1996, p. 1025, § 1; Ga. L. 2002, p. 415, § 48; Ga. L. 2005, p. 60, § 48/HB 95; Ga. L. 2015, p. 370, § 2/HB 464.)

The 2015 amendment, effective July 1, 2015, added subsection (d).

48-7-40.16. Income tax credits for low-emission vehicles.

(a) As used in this Code section, the term:

(1) "Alternative fuel" means methanol, denatured ethanol, and other alcohols; mixtures containing 85 percent or more by volume of methanol, denatured ethanol, and other alcohols with gasoline or other fuels; natural gas; liquefied petroleum gas; hydrogen; coal derived liquid fuels; fuels other than alcohol derived from biological materials; and electricity, including electricity from solar energy.

(2) "Clean fueled vehicle" means a motor vehicle which has been certified by the Environmental Protection Agency to meet, for any model year, a set of emission standards that classifies it as a low-emission vehicle or zero emission vehicle.

(3) "Conventionally fueled vehicle" means a motor vehicle which is fueled solely by a petroleum based fuel such as gasoline or diesel.

(4) "Converted vehicle" means a motor vehicle that is retrofitted so that it is fueled solely by an alternative fuel and which meets the emission standards set forth for that class of low-emission vehicles as defined under rules and regulations of the Board of Natural Resources applicable to clean fueled vehicles, as amended, when operating on such alternative fuel, or which meets the emission standards set forth for zero emission vehicles as defined under rules and regulations of the Board of Natural Resources.

(5) "Low-emission vehicle" means a motor vehicle which is fueled solely by an alternative fuel and which meets emission standards as defined under rules and regulations of the Board of Natural Resources applicable to clean fueled vehicles classified as low-emission vehicles, as amended, when operating on such alternative fuel.

(6) "Motor vehicle" means any self-propelled vehicle designed for transporting persons or property on a street or highway that is registered by the Department of Revenue, except vehicles that are defined as "low-speed vehicles" in paragraph (25.1) of Code Section 40-1-1.

(7) "Zero emission vehicle" means a motor vehicle which has zero tailpipe and evaporative emissions as defined under rules and

regulations of the Board of Natural Resources applicable to clean fueled vehicles, as amended, and shall include an electric vehicle whose drive train is powered solely by electricity, provided said electricity is not provided by any on-board combustion device.

(b)(1) A tax credit is allowed against the tax imposed under this article to a taxpayer for the purchase or lease of a new low-emission vehicle or new zero emission vehicle that is registered in the State of Georgia. The amount of the credit shall be:

(A) For any new low-emission vehicle, 10 percent of the cost of such vehicle or $2,500.00, whichever is less; and

(B) For any new zero emission vehicle, 20 percent of the cost of such vehicle or $5,000.00, whichever is less.

(2) For any new low-emission vehicle or new zero emission vehicle purchased or leased on or after July 1, 2015, the amount of the credit shall be $0.00.

(c) A tax credit is allowed against the tax imposed under this article to a taxpayer for the conversion of a conventionally fueled vehicle to a converted vehicle that is registered in the State of Georgia. The amount of the credit shall be equal to 10 percent of the cost of conversion, not to exceed $2,500.00 per converted vehicle.

(d) A tax credit is allowed against the tax imposed under this article to any business enterprise for the purchase or lease of each electric vehicle charger that is located in the State of Georgia. The amount of the credit shall be 10 percent of the cost of the charger or $2,500.00, whichever is less.

(e) The credits granted under this Code section shall be subject to the following conditions and limitations:

(1) All claims for any credit provided by subsection (b) of this Code section shall be:

(A) Accompanied by a certification approved by the Environmental Protection Division of the Department of Natural Resources; and

(B) Made only by a taxpayer who is the owner of a new clean fueled vehicle, as evidenced by the certificate of title issued for such vehicle; provided, however, that if a new clean fueled vehicle is leased to a taxpayer at retail, the taxpayer who is the lessee shall be entitled to claim the credit; provided, further, that only one taxpayer shall be eligible to claim any credit provided by subsection (b) of this Code section;

(2) All claims for any credit provided by subsection (c) of this Code section must be accompanied by a certification issued by the Envi-

ronmental Protection Division of the Department of Natural Resources;

(3) All claims for any credit provided by subsection (d) of this Code section shall be:

(A) Accompanied by a certification issued by the seller where the new electric vehicle charger was purchased or leased; and

(B) Made only by a taxpayer who is the ultimate purchaser or lessee of a new electric vehicle charger at retail;

(4) Any credit claimed under this Code section but not used in any taxable year may be carried forward for five years from the close of the taxable year in which a new clean fueled vehicle was purchased or leased or a conventionally fueled vehicle was changed into a converted vehicle, provided that the applicable certification required in paragraph (1) or (2) of this subsection accompanies any such claim;

(5) In no event shall the amount of any tax credit provided in this Code section exceed the taxpayer's income tax liability; and

(6) Tax credits authorized in this Code section shall be granted to a taxpayer who purchased or leased and placed in service in Georgia a new low-emission vehicle or zero emission vehicle, which also is a low-speed vehicle, but only if such low-speed vehicle was placed in service during the taxable year ending December 31, 2001. For purposes of this paragraph, the term "low-speed vehicle" means a low-speed vehicle as defined in paragraph (25.1) of Code Section 40-1-1. Any claim for such credit must be accompanied by a manufacturer's statement of origin issued to a dealer registered in Georgia which certifies that the low-speed vehicle was manufactured in compliance with those federal motor vehicle safety standards set forth in 49 C.F.R. Section 571.500 and in effect on January 1, 2001, as well as any other documentation deemed necessary by the commissioner to establish the date that delivery was made and such vehicle was placed in service. A taxpayer shall only be eligible to claim such credit with respect to a single low-speed vehicle.

(f) The state revenue commissioner shall be authorized to adopt rules and regulations to provide for the administration of any tax credit provided by this Code section.

(g) The Board of Natural Resources shall be authorized to adopt rules and regulations to provide for:

(1) The specific standards and requirements for low-emission vehicles, zero emission vehicles, and converted vehicles and electric vehicle chargers which shall be consistent with the terms of this Code section;

(2) An approved certification form which certifies the purchase or lease of a new clean fueled vehicle that is qualified for a tax credit provided by this Code section;

(3) The certification of any converted vehicle that is qualified to claim a tax credit provided by this Code section; and

(4) An approved certification form which shall be issued by the seller which certifies the purchase or lease of a new electric vehicle charger that is qualified for a tax credit provided by this Code section. (Code 1981, § 48-7-40.16, enacted by Ga. L. 1998, p. 1576, § 1; Ga. L. 2000, p. 1090, § 1; Ga. L. 2001, p. 109, § 1; Ga. L. 2002, p. 415, § 48; Ga. L. 2002, p. 506, § 1; Ga. L. 2002, p. 512, §§ 14, 15; Ga. L. 2003, p. 665, § 6; Ga. L. 2005, p. 334, § 29-5/HB 501; Ga. L. 2015, p. 236, § 5-1/HB 170.)

The 2015 amendment, effective July 1, 2015, redesignated the former provisions of subsection (b) as present paragraph (b)(1); inserted "new" in the first sentence of paragraph (b)(1); redesignated former paragraphs (b)(1) and (b)(2) as present subparagraphs (b)(1)(A) and (b)(1)(B), respectively; and added paragraph (b)(2).

Editor's notes. — Ga. L. 2015, p. 236, § 8-1/HB 170, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Transportation Funding Act of 2015.'"

Ga. L. 2015, p. 236, § 8-2/HB 170, not codified by the General Assembly, provides that: "It is the intention of the General Assembly, subject to appropriations and other constitutional obligations of this state, that year to year revenue increases be prioritized to fund education, transportation, and health care in this state."

Ga. L. 2015, p. 236, § 9-1(b)/HB 170, not codified by the General Assembly, provides that: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of this Act." This Act became effective July 1, 2015.

48-7-40.26. Tax credit for film, video, or digital production in state.

(a) This Code section shall be known and may be cited as the "Georgia Entertainment Industry Investment Act."

(b) As used in this Code section, the term:

(1) "Affiliates" means those entities that are included in the production company's or qualified interactive entertainment production company's affiliated group as defined in Section 1504(a) of the Internal Revenue Code and all other entities that are directly or indirectly owned 50 percent or more by members of the affiliated group.

(2) "Base investment" means the aggregate funds actually invested and expended by a production company or qualified interactive entertainment production company as production expenditures

incurred in this state that are directly used in a state certified production or productions.

(3) "Multimarket commercial distribution" means paid commercial distribution which extends to markets outside the State of Georgia.

(4) "Production company" means a company, other than a qualified interactive entertainment production company, primarily engaged in qualified production activities which have been approved by the Department of Economic Development. This term shall not mean or include any form of business owned, affiliated, or controlled, in whole or in part, by any company or person which is in default on any tax obligation of the state, or a loan made by the state or a loan guaranteed by the state.

(5) "Production expenditures" means preproduction, production, and postproduction expenditures incurred in this state that are directly used in a qualified production activity, including without limitation the following: set construction and operation; wardrobes, make-up, accessories, and related services; costs associated with photography and sound synchronization, expenditures excluding license fees incurred with Georgia companies for sound recordings and musical compositions, lighting, and related services and materials; editing and related services; rental of facilities and equipment; leasing of vehicles; costs of food and lodging; digital or tape editing, film processing, transfers of film to tape or digital format, sound mixing, computer graphics services, special effects services, and animation services; total aggregate payroll; airfare, if purchased through a Georgia travel agency or travel company; insurance costs and bonding, if purchased through a Georgia insurance agency; and other direct costs of producing the project in accordance with generally accepted entertainment industry practices. This term shall not include postproduction expenditures for footage shot outside the State of Georgia, marketing, story rights, or distribution, but shall not affect other qualified story rights. This term includes payments to a loan-out company by a production company or qualified interactive entertainment production company that has met its withholding tax obligations as set out below. The production company or qualified interactive entertainment production company shall withhold Georgia income tax at the rate of 6 percent on all payments to loan-out companies for services performed in Georgia. Any amounts so withheld shall be deemed to have been withheld by the loan-out company on wages paid to its employees for services performed in Georgia pursuant to Article 5 of Chapter 7 of this title notwithstanding the exclusion provided in subparagraph (K) of paragraph (10) of Code Section 48-7-100. The amounts so withheld shall be allocated to the loan-out company's employees based on the payments made to the

loan-out company's employees for services performed in Georgia. For purposes of this chapter, loan-out company nonresident employees performing services in Georgia shall be considered taxable nonresidents and the loan-out company shall be subject to income taxation in the taxable year in which the loan-out company's employees perform services in Georgia, notwithstanding any other provisions in this chapter. Such withholding liability shall be subject to penalties and interest in the same manner as the employee withholding taxes imposed by Article 5 of Chapter 7 of this title and the commissioner shall provide by regulation the manner in which such liability shall be assessed and collected.

(6) "Qualified Georgia promotion" means a qualified promotion of this state approved by the Department of Economic Development consisting of a:

(A) Qualified movie production which includes a five-second long static or animated logo that promotes Georgia in the end credits before the below-the-line crew crawl for the life of the project and which includes a link to Georgia on the project's web page;

(B) Qualified TV production which includes an embedded five-second long Georgia promotion during each broadcast worldwide for the life of the project and which includes a link to Georgia on the project's web page;

(C) Qualified music video which includes the Georgia logo at the end of each video and within online promotions; or

(D) Qualified interactive game which includes a 15 second long Georgia advertisement in units sold and embedded in online promotions.

(7) "Qualified interactive entertainment production company" means a company that:

(A) Maintains a business location physically located in Georgia;

(B) In the calendar year directly preceding the start of the taxable year of the qualified interactive entertainment production company, had a total aggregate payroll of $500,000.00 or more for employees working within the state;

(C) Has gross income less than $100 million for the taxable year; and

(D) Is primarily engaged in qualified production activities related to interactive entertainment which have been approved by the Department of Economic Development.

This term shall not mean or include any form of business owned, affiliated, or controlled, in whole or in part, by any company or person

which is in default on any tax obligation of the state, or a loan made by the state or a loan guaranteed by the state.

(8) "Qualified production activities" means the production of new film, video, or digital projects produced in this state and approved by the Department of Economic Development, including only the following: feature films, series, pilots, movies for television, televised commercial advertisements, music videos, interactive entertainment or sound recording projects used in feature films, series, pilots, or movies for television. Such activities shall include projects recorded in this state, in whole or in part, in either short or long form, animation and music, fixed on a delivery system which includes without limitation film, videotape, computer disc, laser disc, and any element of the digital domain, from which the program is viewed or reproduced, and which is intended for multimarket commercial distribution via theaters, video on demand, direct to DVD, digital platforms designed for the distribution of interactive games, licensing for exhibition by individual television stations, groups of stations, networks, advertiser supported sites, cable television stations, or public broadcasting stations. Such term shall not include the coverage of news and athletic events, local interest programming, instructional videos, corporate videos, or projects not shot, recorded, or originally created in Georgia.

(9) "Resident" means an individual as designated pursuant to paragraph (10) of Code Section 48-7-1, as amended.

(10) "State certified production" means a production engaged in qualified production activities which have been approved by the Department of Economic Development in accordance with regulations promulgated pursuant to this Code section. In the instance of a "work for hire" in which one production company or qualified interactive entertainment production company hires another production company or qualified interactive entertainment production company to produce a project or contribute elements of a project for pay, the hired company shall be considered a service provider for the hiring company, and the hiring company shall be entitled to the film tax credit.

(11) "Total aggregate payroll" means the total sum expended by a production company or qualified interactive entertainment production company on salaries paid to employees working within this state in a state certified production or productions. For purposes of this paragraph:

(A) With respect to a single employee, the portion of any salary which exceeds $500,000.00 for a single production shall not be included when calculating total aggregate payroll; and

(B) All payments to a single employee and any legal entity in which the employee has any direct or indirect ownership interest shall be considered as having been paid to the employee and shall be aggregated regardless of the means of payment or distribution.

(c) For any production company or qualified interactive entertainment production company and its affiliates that invest in a state certified production approved by the Department of Economic Development and whose average annual total production expenditures in this state did not exceed $30 million for 2002, 2003, and 2004, there shall be allowed an income tax credit against the tax imposed under this article. The tax credit under this subsection shall be allowed if the base investment in this state equals or exceeds $500,000.00 for qualified production activities and shall be calculated as follows:

(1) The production company or qualified interactive entertainment production company shall be allowed a tax credit equal to 20 percent of the base investment in this state; and

(2)(A) The production company or qualified interactive entertainment production company shall be allowed an additional tax credit equal to 10 percent of such base investment if the qualified production activity includes a qualified Georgia promotion. In lieu of the inclusion of the Georgia promotional logo, the production company or qualified interactive entertainment production company may offer alternative marketing opportunities to be evaluated by the Department of Economic Development to ensure that they offer equal or greater promotional value to the State of Georgia.

(B) The Department of Economic Development shall prepare an annual report detailing the marketing opportunities it has approved under the provisions of subparagraph (A) of this paragraph. The report shall include, but not be limited to:

(i) The goals and strategy behind each marketing opportunity approved pursuant to the provisions of subparagraph (A) of this paragraph;

(ii) The names of all production companies approved by the Department of Economic Development to provide alternative marketing opportunities;

(iii) The estimated value to the state of each approved alternative marketing opportunity compared to the estimated value of the Georgia promotional logo; and

(iv) The names of all production companies who chose to include the Georgia promotional logo in their final production instead of offering the state an alternative marketing proposal.

The report required under this paragraph shall be completed no later than January 1 of each year and presented to each member of the House Committee on Ways and Means, the Senate Finance Committee, the Senate Economic Development Committee, the House Committee on Economic Development and Tourism, and the Governor.

(d) For any production company or qualified interactive entertainment production company and its affiliates that invest in a state certified production approved by the Department of Economic Development and whose average annual total production expenditures in this state exceeded $30 million for 2002, 2003, and 2004, there shall be allowed an income tax credit against the tax imposed under this article. For purposes of this subsection, the excess base investment in this state is computed by taking the current year production expenditures in a state certified production and subtracting the average of the annual total production expenditures for 2002, 2003, and 2004. The tax credit shall be calculated as follows:

(1) If the excess base investment in this state equals or exceeds $500,000.00, the production company or qualified interactive entertainment production company and its affiliates shall be allowed a tax credit of 20 percent of such excess base investment; and

(2)(A) The production company or qualified interactive entertainment production company and its affiliates shall be allowed an additional tax credit equal to 10 percent of the excess base investment if the qualified production activities include a qualified Georgia promotion. In lieu of the inclusion of the Georgia promotional logo, the production company or qualified interactive entertainment production company may offer marketing opportunities to be evaluated by the Department of Economic Development to ensure that they offer equal or greater promotional value to the State of Georgia.

(B) The Department of Economic Development shall prepare an annual report detailing the marketing opportunities it has approved under the provisions of subparagraph (A) of this paragraph. The report shall include, but not be limited to:

(i) The goals and strategy behind each marketing opportunity approved pursuant to the provisions of subparagraph (A) of this paragraph;

(ii) The names of all production companies approved by the Department of Economic Development to provide alternative marketing opportunities;

(iii) The estimated value to the state of each approved alternative marketing opportunity compared to the estimated value of the Georgia promotional logo; and

(iv) The names of all production companies who chose to include the Georgia promotional logo in their final production instead of offering the state an alternative marketing proposal.

The report required under this paragraph shall be completed no later than January 1 of each year and presented to each member of the House Committee on Ways and Means, the Senate Finance Committee, the Senate Economic Development Committee, the House Committee on Economic Development and Tourism, and the Governor.

(e)(1) In no event shall the aggregate amount of tax credits allowed under this Code section for qualified interactive entertainment production companies and affiliates exceed $25 million for taxable years beginning on or after January 1, 2013, and before January 1, 2014. The maximum credit for any qualified interactive entertainment production company and its affiliates shall be $5 million for such taxable year. When the $25 million cap is reached, the tax credit for qualified interactive entertainment production companies shall expire for such taxable years.

(2) For taxable years beginning on or after January 1, 2014, and before January 1, 2015, the amount of tax credits allowed under this Code section for qualified interactive entertainment production companies and affiliates shall not exceed $12.5 million.

(3) For taxable years beginning on or after January 1, 2015, and before January 1, 2016, the amount of tax credits allowed under this Code section for qualified interactive entertainment production companies and affiliates shall not exceed $12.5 million.

(4) For taxable years beginning on or after January 1, 2016, and before January 1, 2019, the amount of tax credits allowed under this Code section for qualified interactive entertainment production companies and affiliates shall not exceed $12.5 million for each taxable year. The tax credits allowed under this Code section for qualified interactive entertainment production companies and affiliates shall not be available for taxable years beginning on or after January 1, 2019.

(5) The maximum allowable credit claimed for any qualified interactive entertainment production company and its affiliates shall not exceed $1.5 million in any single year.

(6) Qualified interactive entertainment production companies seeking to claim a tax credit under the provisions of this Code section shall submit an application to the commissioner for preapproval of such tax credit. The commissioner shall be authorized to promulgate any rules and regulations and forms necessary to implement and administer the provisions of this Code section. The commissioner

shall preapprove the tax credits based on the order in which properly completed applications were submitted. In the event that two or more applications were submitted on the same day and the amount of funds available will not be sufficient to fully fund the tax credits requested, the commissioner shall prorate the available funds between or among the applicants.

(7) No qualified interactive entertainment production company shall be allowed to claim an amount of tax credits under this Code section for any single year in excess of its total aggregate payroll expended to employees working within this state for the calendar year directly preceding the start of the year the qualified interactive entertainment production company claims the tax credits. Any amount in excess of such limit shall not be eligible for carry forward to the succeeding years' tax liability, nor shall such excess amount be eligible for use against the qualified interactive entertainment production company's quarterly or monthly payment under Code Section 48-7-103, nor shall such excess amount be assigned, sold, or transferred to any other taxpayer.

(8) Before the Department of Economic Development issues its approval to the qualified interactive entertainment production company for the qualified production activities related to interactive entertainment, the qualified interactive entertainment production company must certify to the department that:

(A) The qualified interactive entertainment production company maintains a business location physically located in this state; and

(B) The qualified interactive entertainment production company had expended a total aggregate payroll of $500,000.00 or more for employees working within this state during the calendar year directly preceding the start of the taxable year of the qualified interactive entertainment production company.

The department shall issue a certification that the qualified interactive entertainment production company meets the requirements of this paragraph; provided, however, that the department shall not issue any certifications before July 1, 2014. The qualified interactive entertainment production company shall provide such certification to the Department of Economic Development. The Department of Economic Development shall not issue its approval until it receives such certification.

(9)(A) For taxable years beginning on or after January 1, 2016, and before January 1, 2019, the qualified interactive entertainment production company shall report to the Department of Revenue on its Georgia income tax return the monthly average number of full-time employees subject to Georgia income tax withholding for

the taxable year as provided in subparagraphs (B) and (C) of this paragraph. For purposes of this paragraph, a full-time employee shall mean a person who performs a job that requires a minimum of 35 hours a week, and pays at or above the average wage earned in the county with the lowest average wage earned in this state, as reported in the most recently available annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor.

(B) For taxable years beginning on or after January 1, 2016, and before January 1, 2017, the qualified interactive entertainment production company shall report such number for such taxable year and separately for each of the prior two taxable years.

(C) For taxable years beginning on or after January 1, 2017, and before January 1, 2019, the qualified interactive entertainment production company shall report such number for each respective taxable year.

(D) Notwithstanding Code Sections 48-2-15, 48-7-60, and 48-7-61, for such taxable years, the commissioner shall report yearly to the House Committee on Ways and Means and the Senate Finance Committee. The report shall include the name, tax year beginning, and monthly average number of full-time employees for each qualified interactive entertainment production company. The first report shall be submitted by June 30, 2016, and each year thereafter by June 30.

(f)(1) Where the amount of such credit or credits exceeds the production company's or qualified interactive entertainment production company's liability for such taxes in a taxable year, the excess may be taken as a credit against such production company's or qualified interactive entertainment production company's quarterly or monthly payment under Code Section 48-7-103. Each employee whose employer receives credit against such production company's or qualified interactive entertainment production company's quarterly or monthly payment under Code Section 48-7-103 shall receive credit against his or her income tax liability under Code Section 48-7-20 for the corresponding taxable year for the full amount which would be credited against such liability prior to the application of the credit provided for in this subsection. Credits against quarterly or monthly payments under Code Section 48-7-103 and credits against liability under Code Section 48-7-20 established by this subsection shall not constitute income to the production company or qualified interactive entertainment production company.

(2) If a production company and its affiliates, or a qualified interactive entertainment production company and its affiliates,

claim the credit authorized under Code Section 48-7-40, 48-7-40.1, 48-7-40.17, or 48-7-40.18, then the production company and its affiliates, or the qualified interactive entertainment production company and its affiliates, will only be allowed to claim the credit authorized under this Code section to the extent that the Georgia resident employees included in the credit calculation authorized under this Code section and taken by the production company and its affiliates, or the qualified interactive entertainment production company and its affiliates, on such tax return under this Code section have been permanently excluded from the credit authorized under Code Section 48-7-40, 48-7-40.1, 48-7-40.17, or 48-7-40.18.

(g) Any tax credits with respect to a state certified production earned by a production company or qualified interactive entertainment production company and previously claimed but not used by such production company or qualified interactive entertainment production company against its income tax may be transferred or sold in whole or in part by such production company or qualified interactive entertainment production company to another Georgia taxpayer, subject to the following conditions:

(1) Such production company or qualified interactive entertainment production company may make only a single transfer or sale of tax credits earned in a taxable year; however, the transfer or sale may involve one or more transferees;

(2) Such production company or qualified interactive entertainment production company shall submit to the Department of Economic Development and to the Department of Revenue a written notification of any transfer or sale of tax credits within 30 days after the transfer or sale of such tax credits. The notification shall include such production company's or qualified interactive entertainment production company's tax credit balance prior to transfer, the credit certificate number, the remaining balance after transfer, all tax identification numbers for each transferee, the date of transfer, the amount transferred, and any other information required by the Department of Economic Development or the Department of Revenue;

(3) Failure to comply with this subsection shall result in the disallowance of the tax credit until the production company or qualified interactive entertainment production company is in full compliance;

(4) The transfer or sale of this tax credit does not extend the time in which such tax credit can be used. The carry-forward period for tax credit that is transferred or sold shall begin on the date on which the tax credit was originally earned;

(5) A transferee shall have only such rights to claim and use the tax credit that were available to such production company or qualified interactive entertainment production company at the time of the transfer, except for the use of the credit in paragraph (1) of subsection (f) of this Code section. To the extent that such production company or qualified interactive entertainment production company did not have rights to claim or use the tax credit at the time of the transfer, the Department of Revenue shall either disallow the tax credit claimed by the transferee or recapture the tax credit from the transferee. The transferee's recourse is against such production company or qualified interactive entertainment production company; and

(6) The transferee must acquire the tax credits in this Code section for a minimum of 60 percent of the amount of the tax credits so transferred.

(h) The credit granted under this Code section shall be subject to the following conditions and limitations:

(1) The credit may be taken beginning with the taxable year in which the production company or qualified interactive entertainment production company has met the investment requirement. For each year in which such production company or qualified interactive entertainment production company either claims or transfers the credit, the production company or qualified interactive entertainment production company shall attach a schedule to the production company's or qualified interactive entertainment production company's Georgia income tax return which will set forth the following information, as a minimum:

(A) A description of the qualified production activities, along with the certification from the Department of Economic Development;

(B) A detailed listing of the employee names, social security numbers, and Georgia wages when salaries are included in the base investment;

(C) The amount of tax credit claimed for the taxable year;

(D) Any tax credit previously taken by the production company or qualified interactive entertainment production company against Georgia income tax liabilities or the production company's or qualified interactive entertainment production company's quarterly or monthly payments under Code Section 48-7-103;

(E) The amount of tax credit carried over from prior years;

(F) The amount of tax credit utilized by the production company or qualified interactive entertainment production company in the current taxable year; and

(G) The amount of tax credit to be carried over to subsequent tax years;

(2) In the initial year in which the production company or qualified interactive entertainment production company claims the credit granted in this Code section, the production company or qualified interactive entertainment production company shall include in the description of the qualified production activities required by subparagraph (A) of paragraph (1) of this subsection information which demonstrates that the activities included in the base investment or excess base investment equal or exceed $500,000.00 during such year; and

(3) In no event shall the amount of the tax credit under this Code section for a taxable year exceed the production company's or qualified interactive entertainment production company's income tax liability. Any unused credit amount shall be allowed to be carried forward for five years from the close of the taxable year in which the investment occurred. No such credit shall be allowed the production company or qualified interactive entertainment production company against prior years' tax liability.

(i) The Department of Economic Development shall determine through the promulgation of rules and regulations what projects qualify for the tax credits authorized under this Code section. Certification shall be submitted to the state revenue commissioner.

(j) The state revenue commissioner shall promulgate such rules and regulations as are necessary to implement and administer this Code section.

(k) Any production company or qualified interactive entertainment production company claiming, transferring, or selling the tax credit shall be required to reimburse the Department of Revenue for any department initiated audits relating to the tax credit. This subsection shall not apply to routine tax audits of a taxpayer which may include the review of the credit provided in this Code section. (Code 1981, § 48-7-40.26, enacted by Ga. L. 2005, p. 1125, § 2/HB 539; Ga. L. 2006, p. 242, § 2/HB 194; Ga. L. 2008, p. 317, § 1/HB 1100; Ga. L. 2012, p. 976, § 2/HB 1027; Ga. L. 2013, p. 141, § 48/HB 79; Ga. L. 2014, p. 51, § 1/HB 958; Ga. L. 2015, p. 125, § 1/HB 339.)

The 2014 amendment, effective April 14, 2014, substituted the present provisions of paragraph (b)(7) for the former provisions, which read: "'Qualified interactive entertainment production company' means a company whose gross income is less than $100 million that is primarily engaged in qualified production activities related to interactive entertainment which has been approved by the Department of Economic Development. This term shall not mean or include any form of business owned, affiliated, or controlled, in whole or in part, by any company or person which is in default on any tax obligation of the state, or a loan made

by the state or a loan guaranteed by the state."; in paragraph (e)(1), added "for taxable years beginning on or after January 1, 2013, and before January 1, 2014" at the end of the first sentence, added "for such taxable year" at the end of the second sentence, and substituted "taxable years" for "period" at the end of the last sentence; deleted former paragraph (e)(2), which read: "The commissioner shall allow the tax credits for qualified interactive entertainment production companies on a first come, first served basis based on the date the credits are claimed. When the $25 million cap is reached, the tax credit for qualified interactive entertainment production companies shall expire."; and added present paragraphs (e)(2) through (e)(8). See editor's note for applicability.

The 2015 amendment, effective April 30, 2015, rewrote paragraphs (e)(4) and (e)(6); and added paragraph (e)(9).

Editor's notes. — Ga. L. 2014, p. 51, § 3(b)/HB 958, not codified by the General Assembly, provides, in part, that this Code section shall apply to all taxable years beginning on or after January 1, 2014.

Ga. L. 2015, p. 125, § 2/HB 339, not codified by the General Assembly, provides, in part, that the amendment by this Act shall be applicable to tax years beginning on or after January 1, 2016.

48-7-40.29. (For effective date, see note.) Income tax credits for certain qualified equipment that reduces business or domestic energy or water usage.

Delayed effective date. — Ga. L. 2013, p. 141, § 55/HB 79, not codified by the General Assembly, provides, in part, that the 2013 amendment "becomes effective on January 1 of the year following the year in which federal funds are made available for the purpose of funding the credit provided by Ga. L. 2010, p. 1163, Section 1 and in which the state auditor certifies in writing to the commissioner of natural resources and the state revenue commissioner that such funds have been received, have been deposited in the general fund, and are available for purposes of Ga. L. 2010, p. 1163, Section 1". Such federal funds have not been made available as of May, 2015.

48-7-40.30. Income tax credit for certain qualified investments for limited period of time.

(a) The General Assembly finds that entrepreneurial businesses significantly contribute to the economy of this state. The intent of this Code section is to achieve the following:

(1) To encourage individual investors to invest in early stage, innovative, wealth-creating businesses;

(2) To enlarge the number of high quality, high paying jobs within this state both to attract qualified individuals to move to and work within this state and to retain young people educated in Georgia's universities and colleges;

(3) To expand the economy of Georgia by enlarging its base of wealth-creating businesses; and

(4) To support businesses seeking to commercialize technology invented in Georgia's universities and colleges.

(b) As used in this Code section, the term:

(1) "Allowable credit" means the credit as it may be reduced pursuant to paragraph (3) of subsection (i) of this Code section.

(2) "Headquarters" means the principal central administrative office of a business located in this state which conducts significant operations of such business.

(3) "Net income tax liability" means income tax liability reduced by all other credits allowed under this chapter.

(4) "Pass-through entity" means a partnership, an S-corporation, or a limited liability company taxed as a partnership.

(5) "Professional services" means those services specified in paragraph (2) of Code Section 14-7-2 or any service which requires as a condition precedent to the rendering of such service the obtaining of a license from a state licensing board pursuant to Title 43.

(6) "Qualified business" means a registered business that:

(A) Is either a corporation, limited liability company, or a general or limited partnership located in this state;

(B) Was organized no more than three years before the qualified investment was made;

(C) Has its headquarters located in this state at the time the investment was made and has maintained such headquarters for the entire time the qualified business benefited from the tax credit provided for pursuant to this Code section;

(D) Employs 20 or fewer people in this state at the time it is registered as a qualified business;

(E) Has had in any complete fiscal year before registration gross annual revenue as determined in accordance with the Internal Revenue Code of $500,000.00 or less on a consolidated basis;

(F) Has not obtained during its existence more than $1 million in aggregate gross cash proceeds from the issuance of its equity or debt investments, not including commercial loans from chartered banking or savings and loan institutions;

(G) Has not utilized the tax credit described in Code Section 48-7-40.26;

(H) Is primarily engaged in manufacturing, processing, online and digital warehousing, online and digital wholesaling, software development, information technology services, or research and development or is a business providing services other than those described in subparagraph (I) of this paragraph; and

(I) Does not engage substantially in:

(i) Retail sales;

(ii) Real estate or construction;

(iii) Professional services;

(iv) Gambling;

(v) Natural resource extraction;

(vi) Financial, brokerage, or investment activities or insurance; or

(vii) Entertainment, amusement, recreation, or athletic or fitness activity for which an admission or membership is charged.

A business shall be substantially engaged in one of the above activities if its gross revenue from such activity exceeds 25 percent of its gross revenues in any fiscal year or it is established pursuant to its articles of incorporation, articles of organization, operating agreement, or similar organizational documents to engage in such activity as one of its primary purposes.

(7) "Qualified investment" means an investment by a qualified investor of cash in a qualified business for common or preferred stock or an equity interest or a purchase for cash of qualified subordinated debt in a qualified business; provided, however, that funds constituting a qualified investment cannot have been raised or be raised as a result of other tax incentive programs. Furthermore, no investment of common or preferred stock or an equity interest or purchase of subordinated debt shall qualify as a qualified investment if a broker fee or commission or a similar remuneration is paid or given directly or indirectly for soliciting such investment or purchase.

(8) "Qualified investor" means an accredited investor as that term is defined by the United States Securities and Exchange Commission who is:

(A) An individual person who is a resident of this state or a nonresident who is obligated to pay taxes imposed by this chapter; or

(B) A pass-through entity which is formed for investment purposes, has no business operations, has committed capital under management of equal to or less than $5 million, and is not capitalized with funds raised or pooled through private placement memoranda directed to institutional investors. A venture capital fund or commodity fund with institutional investors or a hedge fund shall not qualify as a qualified investor.

(9) "Qualified subordinated debt" means indebtedness that is not secured, that may or may not be convertible into common or preferred

stock or other equity interest, and that is subordinated in payment to all other indebtedness of the qualified business issued or to be issued for money borrowed and no part of which has a maturity date less than five years after the date such indebtedness was purchased.

(10) "Registered" or "registration" means that a business has been certified by the commissioner as a qualified business at the time of application to the commissioner.

(c) A qualified business shall register with the commissioner for purposes of this Code section. Approval of such registration shall constitute certification by the commissioner for 12 months after being issued. A business shall be permitted to renew its registration with the commissioner so long as, at the time of renewal, the business remains a qualified business.

(d) Any individual person making a qualified investment directly in a qualified business in the 2011, 2012, 2013, 2014, 2015, 2016, 2017, or 2018 calendar year shall be allowed a tax credit of 35 percent of the amount invested against the tax imposed by this chapter commencing on January 1 of the second year following the year in which the qualified investment was made as provided in this Code section.

(e) Any pass-through entity making a qualified investment directly in a qualified business in the 2011, 2012, 2013, 2014, 2015, 2016, 2017, or 2018 calendar year shall be allowed a tax credit of 35 percent of the amount invested against the tax imposed by this chapter commencing on January 1 of the second year following the year in which the qualified investment was made as provided in this Code section. Each individual who is a shareholder, partner, or member of an entity shall be allocated the credit allowed the pass-through entity in an amount determined in the same manner as the proportionate shares of income or loss of such pass-through entity would be determined. If an individual's share of the pass-through entity's credit is limited due to the maximum allowable credit under this Code section for a taxable year, the pass-through entity and its owners may not reallocate the unused credit among the other owners.

(f) Tax credits claimed pursuant to this Code section shall be subject to the following conditions and limitations:

(1) The qualified investor shall not be eligible for the credit for the taxable year in which the qualified investment is made but shall be eligible for the credit for the second taxable year beginning after the qualified investment is made as provided in subsection (d) or (e) of this Code section;

(2) The aggregate amount of credit allowed an individual for one or more qualified investments in a single taxable year under this Code

section, whether made directly or by a pass-through entity and allocated to such individual, shall not exceed $50,000.00;

(3) In no event shall the amount of the tax credit allowed an individual under this Code section for a taxable year exceed such individual's net income tax liability. Any unused credit amount shall be allowed to be carried forward for five years from the close of the taxable year in which the qualified investment was made. No such credit shall be allowed against prior years' tax liability;

(4) The qualified investor's basis in the common or preferred stock, equity interest, or subordinated debt acquired as a result of the qualified investment shall be reduced for purposes of this chapter by the amount of the allowable credit; and

(5) The credit shall not be transferrable by the qualified investor except to the heirs and legatees of the qualified investor upon his or her death and to his or her spouse or incident to divorce.

(g) The registration of a business as a qualified business shall be subject to the following conditions and limitations:

(1) If the commissioner finds that any of the information contained in an application of a business for registration under this Code section is false, the commissioner shall revoke the registration of such business. The commissioner shall not revoke the registration of a business solely because it ceases business operations for an indefinite period of time, as long as the business renews its registration;

(2) A registration as a qualified business may not be sold or otherwise transferred, except that, if a qualified business enters into a merger, conversion, consolidation, or other similar transaction with another business and the surviving company would otherwise meet the criteria for being a qualified business, the surviving company retains the registration for the 12 month registration period without further application to the commissioner. In such a case, the qualified business must provide the commissioner with written notice of the merger, conversion, consolidation, or similar transaction and such other information as required by the commissioner; and

(3) The commissioner shall report to the House Committee on Ways and Means and the Senate Finance Committee each year all of the businesses that have registered with the commissioner as a qualified business. The report shall include the name and address of each business, the location of its headquarters, a description of the types of business in which it engages, the number of jobs created by the business during the period covered by the report, and the average wages paid by these jobs.

(h) Any credit claimed under this Code section shall be recaptured in the following situations and shall be subject to the following conditions and limitations:

(1) If within two years after the qualified investment was made, the qualified investor transfers any of the securities or subordinated debt received in the qualified investment to another person or entity, other than a transfer resulting from one of the following:

(A) The death of the qualified investor;

(B) A transfer to the spouse of the qualified investor or incident to divorce; or

(C) A merger, conversion, consolidation, sale of the qualified business's assets, or similar transaction requiring approval by the owners of the qualified business under applicable law, to the extent the qualified investor does not receive cash or tangible property in such merger, conversion, consolidation, sale, or other similar transaction;

(2) Except as provided in paragraph (1) of this subsection, if within five years after the qualified investment was made, the qualified business makes a redemption with respect to the securities received or pays any principal of the subordinated debt;

(3) If within two years after the qualified investment was made, the qualified investor participates in the operation of the qualified business. For the purpose of this paragraph, a qualified investor participates in the operation of a qualified business if the qualified investor, or the qualified investor's spouse, parent, sibling, or child, or a business controlled by any of these individuals, provides services of any nature to the qualified business for compensation, whether as an employee, a contractor, or otherwise. However, a person who provides uncompensated professional advice to a qualified business, whether as an officer, a member of the board of directors or managers or otherwise, or participates in a stock or membership option or stock or membership plan, or both, shall be eligible for the credit;

(4) The amount of the credit recaptured shall apply only to the qualified investment in the particular qualified business in which the investment was made;

(5) The amount of the recaptured tax credit determined under this subsection shall be added to the qualified investor's income tax liability for the taxable year in which the recapture occurs under this subsection; and

(6) In the event the credit is recaptured because the qualified business ceases business operations, dissolves, or liquidates, the

qualified investor may claim either the credit authorized under this Code section or any capital loss the qualified investor otherwise would be able to claim regarding that qualified business, but shall not be authorized to claim and be allowed both.

(i)(1) A qualified investor seeking to claim a tax credit provided for under this Code section shall submit an application to the commissioner for tentative approval of such tax credit between September 1 and October 31 of the year for which the tax credit is claimed or allowed. The commissioner shall promulgate the rules and forms on which the application is to be submitted. Amounts specified on such application shall not be changed by the qualified investor after the application is approved by the commissioner. The commissioner shall review such application and shall tentatively approve such application upon determining that it meets the requirements of this Code section.

(2) The commissioner shall provide tentative approval of the applications by the date provided in paragraph (3) of this subsection as follows:

(A) The total aggregate amount of all tax credits allowed to qualified investors or pass-through entities for investments made in the 2011 calendar year and claimed and allowed in the 2013 taxable year shall not exceed $10 million in such year;

(B) The total aggregate amount of all tax credits allowed to qualified investors or pass-through entities for investments made in the 2012 calendar year and claimed and allowed in the 2014 taxable year shall not exceed $10 million in such year;

(C) The total aggregate amount of all tax credits allowed to qualified investors or pass-through entities for investments made in the 2013 calendar year and claimed and allowed in the 2015 taxable year shall not exceed $10 million in such year;

(D) The total aggregate amount of all tax credits allowed to qualified investors or pass-through entities for investments made in the 2014 calendar year and claimed and allowed in the 2016 taxable year shall not exceed $5 million in such year;

(E) The total aggregate amount of all tax credits allowed to qualified investors or pass-through entities for investments made in the 2015 calendar year and claimed and allowed in the 2017 taxable year shall not exceed $5 million in such year;

(F) The total aggregate amount of all tax credits allowed to qualified investors or pass-through entities for investments made in the 2016 calendar year and claimed and allowed in the 2018 taxable year shall not exceed $5 million in such year;

(G) The total aggregate amount of all tax credits allowed to qualified investors or pass-through entities for investments made in the 2017 calendar year and claimed and allowed in the 2019 taxable year shall not exceed $5 million in such year; and

(H) The total aggregate amount of all tax credits allowed to qualified investors or pass-through entities for investments made in the 2018 calendar year and claimed and allowed in the 2020 taxable year shall not exceed $5 million in such year.

(3) The commissioner shall notify each qualified investor of the tax credits tentatively approved and allocated to such qualified investor by December 31 of the year in which the application was submitted. In the event that the credit amounts on the tax credit applications filed with the commissioner exceed the maximum aggregate limit of tax credits under this subsection, then the tax credits shall be allocated among the qualified investors who filed a timely application on a pro rata basis based upon the amounts otherwise allowed by this Code section. Once the tax credit application has been approved and the amount approved has been communicated to the applicant, the qualified investor may then apply the amount of the approved tax credit to its tax liability for the tax year for which the approved application applies.

(j) The commissioner shall promulgate any rules and regulations necessary to implement and administer this Code section. (Code 1981, § 48-7-40.30, enacted by Ga. L. 2010, p. 1163, § 2/HB 1069; Ga. L. 2013, p. 141, § 48/HB 79; Ga. L. 2013, p. 243, § 6/HB 318; Ga. L. 2015, p. 371, § 1/HB 237.)

The 2015 amendment, effective July 1, 2015, substituted "this state" for "the state" at the end of the first sentence in subsection (a) and near the beginning of paragraph (a)(2); substituted "paragraph (3)" for "subparagraph (3)" in the middle of paragraph (b)(1); substituted "or research and development or is a" for "research and development, or a" in subparagraph (b)(6)(H); substituted "2015, 2016, 2017, or 2018" for "or 2015" near the beginning of subsection (d) and near the beginning of the first sentence in subsection (e); inserted a comma after "business" and "otherwise" in the last sentence of paragraph (h)(3); and, in paragraph (i)(2), deleted "and" at the end of subparagraph (i)(2)(D), substituted a semicolon for a period at the end of subparagraph (i)(2)(E), and added subparagraphs (i)(2)(F) through (i)(2)(H).

48-7-41. [Effective until January 1, 2020] Basic skills education program credits.

(a) As used in this Code section, the term:

(1) "Adult basic skills education" means training that enhances reading, writing, or mathematical skills of adult employees.

(2) "Approved adult basic skills education program" means an employer provided or employer sponsored adult basic skills education program:

(A) That has agreed to operate under the standards for the delivery of adult education services as designated by the Technical College System of Georgia, Office of Adult Education; and

(B) For which the employer does not require the employee to make any payment, either directly or indirectly, through forfeiture of leave time, vacation time, or other compensable time.

(3) "Basic skills education test" means the test required to receive a GED diploma.

(4) "Employee" means any employee resident in this state who is employed for at least 24 hours per week and has been continuously employed by the employer for at least 16 consecutive weeks and who is eligible to take the GED test.

(5) "Employer" means any employer upon whom an income tax is imposed by this chapter.

(6) "Employer provided" refers to approved basic skills education offered on the premises of the employer or on premises approved by the Technical College System of Georgia by instructors hired by or employed by an employer.

(7) "Employer sponsored" refers to a contractual arrangement with a school, university, college, or other instructional facility which offers approved basic skills education that is paid for by the employer.

(b) A tax credit shall be granted to an employer who provides or sponsors an approved adult basic skills education program. The amount of the tax credit shall be:

(1) Four hundred dollars for each employee who passes the basic skills education test that was paid for by the employer in a taxable year; or

(2) Twelve hundred dollars for each employee who successfully completes an approved adult basic skills education program consisting of at least 40 hours of training while the employee is being compensated at his or her normal rate of pay, and passes the basic skills education test that was paid for by the employer in a taxable year.

No employer shall receive a credit if the employer requires that the employee reimburse or pay the employer for the cost of attending the adult basic skills education program or taking the basic skills education test.

(c)(1) An employer desiring to claim a tax credit under the provisions of this Code section shall submit an application to the commissioner for preapproval of such tax credit. The application for preapproval shall be developed and promulgated by the commissioner along with any rules or regulations necessary to aid in the administration of this income tax credit. The department shall have the authority to require electronic submission of such application in the manner specified by the department.

(2) Within 45 days of receipt of a properly completed application for preapproval, the commissioner shall preapprove the application if a sufficient amount of available tax credits remains. The commissioner shall provide notice of the preapproval or denial to the employer and the Office of Adult Education. The commissioner shall preapprove the tax credits based on the order in which properly completed applications were submitted. In the event that two or more applications were submitted on the same day and the amount of funds available will not be sufficient to fully fund the tax credits requested, the commissioner shall prorate the available funds between or among the applicants.

(d) In order to receive the income tax credit established under this Code section, the employer shall, after the successful completion by an employee of the requirements of paragraph (1) or (2) of subsection (b) of this Code section, and after receiving preapproval of the credit by the commissioner under subsection (c) of this Code section, certify to the Technical College System of Georgia, Office of Adult Education, the name of the employee, the name of the employer, the name of the approved adult basic skills education provider, and such other information as may be required by the Office of Adult Education. The Office of Adult Education shall issue a certification to the employer if the requirements of subsections (a), (b), and (c) of this Code section are satisfied. Such certification shall be attached to the taxpayer's income tax return when the credit is claimed. The Technical College System of Georgia shall adopt rules and regulations and forms necessary to implement and administer this income tax credit program. The department is expressly authorized and directed to work with the Technical College System of Georgia to ensure the proper granting of income tax credits pursuant to this Code section.

(e) In no event shall the aggregate amount of the income tax credits preapproved under this Code section exceed $1 million per calendar year. No single employer shall receive income tax credits pursuant to this Code section in excess of $100,000.00 per calendar year.

(f) The income tax credit granted to any employer pursuant to this Code section shall not exceed the amount of the employer's income tax liability for the taxable year as computed without regard to this Code section.

(g) The department shall provide an annual report to the General Assembly on the utilization of the tax credit established under this Code section.

(h) This Code section shall stand repealed on January 1, 2020. (Code 1981, § 48-7-41, enacted by Ga. L. 2015, p. 214, § 2/HB 63.)

Effective date. — This Code section became effective May 1, 2015.

Editor's notes. — This Code section formerly pertained to basic skills education program credits. The former Code section was based on Code 1981, § 48-7-41, enacted by Ga. L. 1991, p. 1709, § 1; Ga. L. 1995, p. 10, § 48; Ga. L. 2008, p. 335, § 9/SB 435 and was repealed by Ga. L. 2015, p. 214, § 2/HB 63, effective May 1, 2015.

Ga. L. 2015, p. 214, § 1/HB 63, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Georgia Employer GED Tax Credit Act of 2015.'"

Ga. L. 2015, p. 214, § 3/HB 63, not codified by the General Assembly, provides, in part, that this Act "shall be applicable to all taxable years beginning on or after January 1, 2016."

ARTICLE 5

CURRENT INCOME TAX PAYMENT

48-7-127. Other violations of article; penalties.

(a) **Willful failure to withhold tax.**

(1) It shall be unlawful for any person who is required to deduct and withhold the tax imposed by Code Section 48-7-101 willfully to fail, in making payments of wages for any payroll period, to deduct and withhold the required tax from the wages paid to any employee.

(2) In addition to any other penalties provided by law, any person who violates paragraph (1) of this subsection shall be guilty of a misdemeanor for each such payroll period.

(b) **Willful failure to pay over withheld tax.**

(1) It shall be unlawful for any person who has deducted and withheld any amount from an employee's wages as a tax required under Code Section 48-7-101 willfully to fail, within the prescribed time, to pay the amount over to the commissioner as required under Code Section 48-7-103.

(2) In addition to any other penalties provided by law, any person who violates paragraph (1) of this subsection shall be guilty of a misdemeanor.

(3) For purposes of this subsection, a lack of funds existing immediately after the payment of wages, whether or not created by the payment of the wages, shall not negate willfulness.

(c) **Willful failure to file return or pay estimated tax.**

(1) It shall be unlawful for any person who is required under this article or regulations pursuant to this article to file any return of any tax or pay estimated tax or to keep any record, willfully to fail to file the return or pay the tax or to keep the records at the time or times required by law or regulation.

(2) In addition to any other penalties provided by law, any person who violates paragraph (1) of this subsection shall be guilty of a misdemeanor.

(d) **False exemption certificate or failure to supply information.**

(1) It shall be unlawful for any individual who is required to supply information to his employer under Code Section 48-7-102 willfully to supply false or fraudulent information or willfully to fail to supply information under Code Section 48-7-102 which would require an increase in the tax to be withheld under Code Section 48-7-102.

(2) In lieu of any penalty otherwise provided, any individual who violates paragraph (1) of this subsection shall be guilty of a misdemeanor.

(e) **False withholding receipts or failure to furnish receipts.**

(1) It shall be unlawful for any person who is required to furnish to an employee the receipt prescribed in Code Section 48-7-105 willfully to furnish a false or fraudulent receipt or willfully to fail to furnish the receipt at the time, in the manner, and showing the information required by law or regulation.

(2) In lieu of any other penalty provided by law, except the penalty provided in subsection (d) of Code Section 48-7-126, any person who violates paragraph (1) of this subsection shall be guilty of a misdemeanor for each such receipt or failure.

(f) **Attempts to evade or defeat tax.**

(1) It shall be unlawful for any person willfully to attempt in any manner to evade or defeat any tax imposed under this article or the payment of any tax imposed under this article.

(2) In addition to any other penalties provided by law, any person who violates paragraph (1) of this subsection shall be guilty of a misdemeanor.

(g) **Willful failure to pay corporate estimated tax.**

(1) It shall be unlawful for any officer, director, or employee of a corporation required under this article or regulations pursuant to this article to file estimated tax willfully to be responsible for the failure of the corporation to pay any installment of estimated tax due.

(2) In addition to any other penalties provided by law, any individual who violates any provision of paragraph (1) of this subsection shall be guilty of a misdemeanor for each such failure.

(h) **Violation of notice of delinquency.**

(1) It shall be unlawful for any person to violate the provisions of subsection (c) of Code Section 48-7-108 with respect to notice of delinquency.

(2) Any person who violates paragraph (1) of this subsection with respect to notice of delinquency shall be guilty of a misdemeanor.

(i) **Failure to comply with notice of special accounting.**

(1) It shall be unlawful for any person to fail to comply with a notice of the commissioner requiring compliance with subsection (b) of Code Section 48-7-109.1, providing for special accounting under the current income tax payment law.

(2) In addition to other penalties provided by law, any person who violates paragraph (1) of this subsection shall be guilty of a misdemeanor unless there was a reasonable doubt as to whether the law required collection of the tax or as to who was required by law to collect the tax or the failure to comply was due to circumstances beyond his control.

(3) For the purposes of this subsection, a lack of funds existing immediately after the payment of wages, whether or not created by the payment of such wages, shall not be considered to be circumstances beyond the control of a person. (Ga. L. 1960, p. 7, § 31; Ga. L. 1963, p. 18, § 8; Code 1933, § 91A-9933, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1983, p. 1834, § 10; Ga. L. 1988, p. 1380, § 7; Ga. L. 2004, p. 416, § 1; Ga. L. 2004, p. 487, § 1.)

Editor's notes. — Ga. L. 2004, p. 487, § 3, not codified by the General Assembly, deleted former subsection (j), effective July 1, 2014, which read: "**False claims of independent contractor status.**

"(1) It shall be unlawful for any person knowingly to coerce, induce, or threaten an individual falsely to declare himself or herself to be an independent contractor or falsely to claim that an individual employed by such person is an independent contractor in order to avoid or evade the withholding or payment of taxes required under this title.

"(2) In addition to any other penalties provided by law, any person who violates paragraph (1) of this subsection in connection with contracts with the state or any political subdivision thereof or any authority of the state or a political subdivision thereof, upon conviction, shall be subject to a fine equal to the total amount of tax owed for the first offense. For the second offense, upon conviction, the person shall be subject to a fine equal to two times the total amount of tax owed. For third and subsequent offenses, upon conviction, the person shall be subject to a fine equal to four times the total amount of tax owed. A violation of paragraph (1) of this subsection with regard to a contract with the state or any political subdivision thereof or any authority of the state or any political subdivision thereof shall constitute only one offense, regardless of the number of individuals improperly coerced,

induced, or threatened to declare falsely to be independent contractors or falsely claimed to be independent contractors in connection with such contract."

ARTICLE 7

SETOFF DEBT COLLECTION

48-7-160. Purposes.

The purpose of this article is to establish a policy and to provide a system whereby all claimant agencies and courts of this state in conjunction with the department shall cooperate in identifying debtors who owe money to the state through its various claimant agencies or courts and who qualify for refunds from the department. It is also the purpose of this article to establish procedures for setting off against any such refund the sum of any debt owed to the claimant agencies or courts. It is the intent of the General Assembly that this article be liberally construed to effectuate these purposes. (Code 1933, § 91A-4101, enacted by Ga. L. 1980, p. 1555, § 1; Ga. L. 2014, p. 56, § 1/HB 1000.)

The 2014 amendment, effective January 1, 2015, inserted "and courts" and "or courts" in the first sentence and substituted "claimant agencies or courts" for "state" at the end of the second sentence in this Code section.

48-7-161. Definitions.

As used in this article, the term:

(.1) "Administrative Office of the Courts" means entity created pursuant to Code Section 15-5-22.

(1) "Claimant agency" means and includes, in the order of priority set forth below:

(A) The Department of Human Services and the Department of Behavioral Health and Developmental Disabilities with respect to collection of debts under Article 1 of Chapter 11 of Title 19, Code Section 49-4-15, and Chapter 9 of Title 37;

(B) The Georgia Student Finance Authority with respect to the collection of debts arising under Part 3 of Article 7 of Chapter 3 of Title 20;

(C) The Georgia Higher Education Assistance Corporation with respect to the collection of debts arising under Part 2 of Article 7 of Chapter 3 of Title 20;

(D) The Georgia Board for Physician Workforce with respect to the collection of debts arising under Part 6 of Article 7 of Chapter 3 of Title 20;

(E) The Department of Labor with respect to the collection of debts arising under Code Sections 34-8-254 and 34-8-255 and Article 5 of Chapter 8 of Title 34, with the exception of Code Sections 34-8-158 through 34-8-161; provided, however, that the Department of Labor establishes that the debtor has been afforded required due process rights by such Department of Labor with respect to the debt and all reasonable collection efforts have been exhausted;

(F) The Department of Community Supervision with respect to probation fees arising under Code Section 42-8-34 and restitution or reparation ordered by a court as a part of the sentence imposed on a person convicted of a crime who is in the legal custody of the Department of Corrections or the Department of Community Supervision;

(G) The Department of Juvenile Justice with respect to restitution imposed on a juvenile for a delinquent act which would constitute a crime if committed by an adult; and

(H) The Georgia Lottery Corporation with respect to proceeds arising under Code Section 50-27-21.

(2) "Court" means all trial courts in this state, including but not limited to the superior, state, juvenile, magistrate, probate, and municipal courts, whether called mayor's courts, recorder's courts, police courts, civil courts, or traffic courts, and miscellaneous and special courts.

(3) "Debt" means:

(A) Any liquidated sum due and owing any claimant agency, which sum has accrued through contract, subrogation, tort, or operation of law regardless of whether there is an outstanding judgment for the sum, any sum which is due and owing any person and is enforceable by the Department of Human Services pursuant to subsection (b) of Code Section 19-11-8, or any sum of restitution or reparation due pursuant to a sentence imposed on a person convicted of a crime and sentenced to restitution or reparation and probation; or

(B) Any liquidated sum that constitutes any and all court costs, surcharges, and fines for which there is an outstanding court judgment.

(4) "Debtor" means any individual owing money to or having a delinquent account with any claimant agency or court, which obligation has not been adjudicated as satisfied by court order, set aside by court order, or discharged in bankruptcy.

(5) "Refund" means the Georgia income tax refund which the department determines to be due any individual taxpayer. (Code 1933, § 91A-4102, enacted by Ga. L. 1980, p. 1555, § 1; Ga. L. 1985, p. 785, § 10; Ga. L. 1986, p. 825, § 1; Ga. L. 1988, p. 937, § 1; Ga. L. 1991, p. 139, § 2; Ga. L. 2000, p. 136, § 48; Ga. L. 2004, p. 148, § 1; Ga. L. 2005, p. 88, § 7/HB 172; Ga. L. 2009, p. 453, § 2-21/HB 228; Ga. L. 2011, p. 459, § 5/HB 509; Ga. L. 2014, p. 56, § 1/HB 1000; Ga. L. 2015, p. 422, § 5-99/HB 310; Ga. L. 2015, p. 909, § 1/HB 275.)

The 2014 amendment, effective January 1, 2015, added paragraphs (.1) and (2); redesignated former paragraphs (2) through (4) as present paragraphs (3) through (5), respectively; in paragraph (3), substituted "means: (A) Any liquidated" for "means any liquidated" and added "; or" at the end; added subparagraph (3)(B); and inserted "or court" in the middle of paragraph (4).

The 2015 amendments. — The first 2015 amendment, effective July 1, 2015, in subparagraph (1)(F), substituted "Department of Community Supervision" for "Department of Corrections" and substituted "Department of Corrections or Department of Community Supervision; and" for "department;" at the end; deleted former subparagraph (1)(G), which read: "The State Board of Pardons and Paroles with respect to restitution imposed on a person convicted of a crime and subject to the jurisdiction of the board; and"; and redesignated former subparagraph (1)(H) as present subparagraph (1)(G). See editor's note for applicability. The second 2015 amendment, effective May 6, 2015, deleted "and" at the end of subparagraph (1)(G); substituted "; and" for a period at the end of subparagraph (1)(H); and added subparagraph (1)(I).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2015, "and" was deleted at the end of subparagraph (1)(F).

Editor's notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides that the amendment by this Act shall apply to sentences entered on or after July 1, 2015.

48-7-162. Collection remedy additional.

Editor's notes. — Ga. L. 2014, p. 56, § 1/HB 1000, effective January 1, 2015, reenacted this Code section without change. Refer to bound volume for text of this Code section.

48-7-162.1. Submission of debts through Administrative Office of the Courts.

(a) Submission of debts through the Administrative Office of the Courts shall be the sole manner through which debts owed to courts may be submitted to the department for collection under this article. The Administrative Office of the Courts shall be authorized to enter into written contracts for the performance of administrative functions and duties under this article by one or more administrative entities consisting of nonprofit Georgia corporations, except for a public utility, in existence on or before January 1, 2012, whose income is exempt from federal income taxation pursuant to Section 115 of the Internet Revenue Code of 1986, or third party vendors approved by the department.

(b) Any claim submitted by a court through the Administrative Office of the Courts shall be subordinate to all claims submitted by claimant agencies. (Code 1981, § 48-7-162.1, enacted by Ga. L. 2014, p. 56, § 1/HB 1000.)

Effective date. — This Code section became effective January 1, 2015.

48-7-163. Collection of debts through setoff; minimum debt; procedure; exceptions; request for setoff; administrative collection assistance fee.

(a) A claimant agency or the Administrative Office of the Courts may submit any debt or debts when each such debt is in excess of $25.00 to the department for collection through setoff under the procedures established by this article, except in cases where the validity of the debt is legitimately in dispute, an alternate means of collection is pending and believed to be adequate, or such collection would result in a loss of federal funds or federal assistance.

(b) Upon request of a claimant agency or the Administrative Office of the Courts, the department shall set off any refund against the debt certified by the claimant agency or the Administrative Office of the Courts as provided in this article.

(c) An administrative collection assistance fee shall be imposed on each such debt submitted by the Administrative Office of the Courts to the department to recover the costs incurred by the Administrative Office of the Courts and the department in collecting debts under this article. The fee shall be in addition to the debt to be set off and shall be fixed such that the proceeds of the fee shall not exceed the total direct and indirect costs to the Administrative Office of the Courts and the department for administering such debt setoff collection. In no event shall the amount of such fee exceed $20.00 per debt. The Administrative Office of the Courts shall reimburse the department from the proceeds of such fee based upon the actual costs incurred by the department. Such proceeds shall be retained and expended pursuant to Code Section 45-12-92.1. (Code 1933, § 91A-4104, enacted by Ga. L. 1980, p. 1555, § 1; Ga. L. 2004, p. 148, § 2; Ga. L. 2014, p. 56, § 1/HB 1000.)

The 2014 amendment, effective January 1, 2015, inserted "or the Administrative Office of the Courts" near the beginning of subsection (a) and twice in subsection (b); in subsection (a), inserted "debt or" and "when each such debt is" near the beginning, deleted "owed in accordance with Code Section 48-7-161" following "$25.00", and substituted "procedures" for "procedure" near the middle; deleted "as defined in Code Section 48-7-161" following "any refund" in subsection (b); and added subsection (c).

48-7-164. Procedure for setoffs and notification of taxpayers; certification of debts; transfer of refunds to claimant agency; notice to taxpayers; transferred funds in escrow account; costs borne by claimant agency.

(a)(1) Within a time frame specified by the department, a claimant agency seeking to collect a debt through setoff shall supply the information necessary to identify each debtor whose refund is sought to be set off, including but not limited to such debtor's social security number, and shall certify the amount of the debt or debts owed by each debtor.

(2) The Administrative Office of the Courts shall supply the information necessary to identify each debtor whose refund is sought to be set off, including but not limited to such debtor's social security number, and shall certify the amount of the debt or debts owed by each debtor.

(3) The department may rely upon the certification by a claimant agency or the Administrative Office of the Courts that the debt is valid and owed by the debtor and that such debt may be validly collected by the department under this article. No employee or agent of the department shall be liable to any person for collecting any such debt that was not valid and owed by the debtor.

(b)(1) If a debtor identified by a claimant agency or the Administrative Office of the Courts is determined by the department to be entitled to a refund of at least $25.00, the department shall transfer an amount equal to the refund owed, not to exceed the amount of the claimed debt certified, to the claimant agency or the Administrative Office of the Courts. When the refund owed exceeds the claimed debt and administrative collection assistance fee, the department shall send the excess amount to the debtor within a reasonable time after the excess is determined.

(2) When the amount of the setoff available for claims is insufficient for the combined total of the claims filed by courts, distribution of the available setoff funds shall be made in the order of the date each court claim is received by the Administrative Office of the Courts. Such claim shall remain active until sufficient additional setoff funds become available to set off the remainder of the debt or until the claims themselves expire by law.

(3) If the department is able to collect only part of a debt through setoff under this article, the administrative collection assistance fees shall have priority over the remainder of the debt.

(c) At the time of the transfer of funds to a claimant agency or the Administrative Office of the Courts pursuant to this Code section, the

department shall notify the taxpayer or taxpayers whose refund is sought to be set off and the claimant agency or the Administrative Office of the Courts that the transfer has been made. The notice shall clearly set forth the name of the debtor, the manner in which the debt arose, the amount of the claimed debt, the transfer of funds to the claimant agency or the Administrative Office of the Courts pursuant to this Code section and the intention to set off the refund against the debt, the amount of the refund in excess of the claimed debt, the taxpayer's opportunity to give written notice to contest the setoff within 30 days of the date of mailing of the notice, the name and mailing address of the claimant agency or the Administrative Office of the Courts to which the application for a hearing must be sent, and the fact that failure to apply for a hearing in writing within the 30 day period will be deemed a waiver of the opportunity to contest the setoff. In the case of a joint return, the notice shall also state the name of any taxpayer named in the return against whom no debt is claimed, the fact that a debt is not claimed against such taxpayer, the fact that such taxpayer is entitled to receive a refund if it is due him or her regardless of the debt asserted against his or her spouse, and that in order to obtain a refund due him or her such taxpayer must apply in writing for a hearing with the claimant agency or the Administrative Office of the Courts named in the notice within 30 days of the date of the mailing of the notice. If a taxpayer fails to apply in writing for a hearing within 30 days of the mailing of the notice, he or she will have waived his or her opportunity to contest the setoff.

(d) Upon receipt of funds transferred from the department pursuant to this Code section, the claimant agency or the Administrative Office of the Courts shall deposit and hold the funds in an escrow account until a final determination of the validity of the debt. Any interest accruing on proceeds in such escrow account shall not constitute any part of the setoff funds being held in escrow and shall be retained by the claimant agency or the Administrative Office of the Courts to cover administrative costs.

(e) The claimant agency shall pay the department for all costs incurred by the department in setting off debts in the manner provided in this article. (Code 1933, § 91A-4105, enacted by Ga. L. 1980, p. 1555, § 1; Ga. L. 2014, p. 56, § 1/HB 1000.)

The 2014 amendment, effective January 1, 2015, in subsection (a), designated the existing provisions as paragraph (a)(1), and, in paragraph (a)(1), inserted ", including but not limited to such debtor's social security number," and added paragraphs (a)(2) and (a)(3); designated the existing provisions of subsection (b) as paragraph (b)(1) and inserted "and administrative collection assistance fee" in the second sentence of paragraph (b)(1); added paragraphs (b)(2) and (b)(3); inserted "or the Administrative Office of the Courts" in two places in paragraph (b)(1), throughout subsection (c), and in subsection (d); deleted "subsection (b) of" following "pursuant to" in the first and second sentences of subsection (c) and in subsec-

tion (d); in subsection (c), inserted "and the claimant agency or the Administrative Office of the Courts" in the first sentence, inserted "or her" throughout the third sentence and in the last sentence, and inserted "or she" near the end of the last sentence; and added the last sentence in subsection (d).

48-7-165. Hearing procedure; adjustments of incorrect debts; nonavailability of hearings before department; issues previously litigated; appeals.

Editor's notes. — Ga. L. 2014, p. 56, § 1/HB 1000, effective January 1, 2015, reenacted this Code section without change. Refer to bound volume for text of this Code section.

48-7-165.1. Hearing; final determination of debt.

(a)(1) Except as otherwise provided in subsection (d) of this Code section, if the Administrative Office of the Courts receives written notice from the debtor contesting the setoff or the sum upon which the setoff is based within 30 days of the debtor being notified of the debt setoff, the Administrative Office of the Courts shall notify the court to whom the debt is owed that the sum due and owing shall not be disbursed pursuant to this article until the court to whom the debt is owed has granted a hearing to the debtor and obtained a final determination on the debt under this Code section and provided evidence of such final determination to the Administrative Office of the Courts. Such sum due and owing shall not be disbursed to the debtor or the court to whom the debt is owed prior to such final determination.

(2) The hearing required under this Code section shall be conducted after notice of such hearing is provided to the debtor by certified mail or personal service. When personal service is utilized, such personal service shall be made by the officers of the court designated by the judges of that court or any other officers authorized by law to serve process.

(b)(1) The officers of the court designated by the judges of that court submitting debts to the Administrative Office of the Courts shall appoint a hearing officer for the purpose of conducting hearings under this Code section. The officers of the court shall adopt appropriate procedures to govern the conducting of hearings by the hearing officer. A written or electronic copy of such procedures shall be provided to a debtor immediately upon the receipt of notice from a debtor under subsection (a) of this Code section.

(2) Issues that have been previously litigated shall not be considered at a hearing. The hearing officer shall determine whether the debt is owed to the court and the amount of the debt. Such determination shall be in writing and shall be provided to the debtor and the

Administrative Office of the Courts within five days after the date the hearing is conducted.

(3) If the debtor or the court disagrees with the determination of the hearing officer, either party may appeal that determination by filing a petition in the superior court not later than ten days following the date of the hearing officer's written determination. The superior court judge shall conduct a hearing and shall render a final determination in writing and shall transmit a copy to the hearing officer, the debtor, and the Administrative Office of the Courts not later than ten days after the date of that hearing.

(4) The losing party to such proceeding as provided for in paragraph (3) of this subsection shall pay any filing fees and costs of service, except that the officers of the court designated by the judges of that court shall be authorized to waive such fees and costs. The court submitting the debt to the Administrative Office of the Courts shall be responsible for attorneys' fees of the debtor who is contesting the setoff in cases where the superior court finds in favor of the debtor.

(c) If a court submits a debt for collection under this article following final determination of the debt in accordance with this Code section and the Administrative Office of the Courts is notified by the department that no refund proceeds are available or sufficient for setoff of the entire debt, such claim shall remain valid until sufficient refund proceeds are available for setoff as provided in subsection (b) of Code Section 48-7-164 and are not subject to further appeal. (Code 1981, § 48-7-165.1, enacted by Ga. L. 2014, p. 56, § 1/HB 1000.)

Effective date. — This Code section became effective January 1, 2015.

48-7-166. Final determination of debt due; transfer from escrow account to credit of debtor's account of debt due; notice of setoff; contents; refund of excess; disbursement of funds.

(a)(1) Upon final determination of the amount of the debt due and owing by means of the hearing provided by Code Section 48-7-165 or by the taxpayer's default through failure to comply with subsection (c) of Code Section 48-7-164, the claimant agency shall remove the amount of the debt due and owing from the escrow account established pursuant to Code Section 48-7-164 and shall credit the amount to the debtor's obligation.

(2) Upon final determination of the amount of the debt due and owing as provided by Code Section 48-7-165.1, or by the taxpayer's default through failure to comply with subsection (c) of Code Section

48-7-164, the Administrative Office of the Courts shall remove the amount of the debt due and owing from the escrow account established pursuant to Code Section 48-7-164 and shall credit the amount to the debtor's obligation.

(b) Upon transfer of the debt due and owing from the escrow account to the credit of the debtor's account, the claimant agency or the Administrative Office of the Courts shall notify the debtor in writing of the finalization of the setoff. The department shall prepare a notice for use by the claimant agency or the Administrative Office of the Courts. Such notice shall include a final accounting of the refund which was set off, including the amount of the refund to which the debtor was entitled prior to setoff, the amount of the debt due and owing, the amount of the refund in excess of the debt which has been returned to the debtor by the department pursuant to Code Section 48-7-164, and the amount of the funds transferred to the claimant agency or the Administrative Office of the Courts pursuant to Code Section 48-7-164 in excess of the debt finally determined to be due and owing at a hearing held pursuant to Code Section 48-7-165 or 48-7-165.1, if such a hearing was held or the amount of the funds transferred to the Administrative Office of the Courts pursuant to Code Section 48-7-164 is in excess of the debt finally determined to be due and owing pursuant to Code Section 48-7-165.1 as determined in the filing of an appeal. At such time, the claimant agency or the Administrative Office of the Courts shall refund to the debtor the amount of the claimed debt originally certified and transferred to it by the department in excess of the amount of debt finally found to be due and owing.

(c) Following finalization of the setoff pursuant to subsection (b) of this Code section, the Administrative Office of the Courts shall transfer the funds to the court. Any funds so transferred by the Administrative Office of the Courts shall be disbursed by the court in the same manner as if such funds had been originally collected by such court without having resorted to collection under this article. (Code 1933, § 91A-4107, enacted by Ga. L. 1980, p. 1555, § 1; Ga. L. 2014, p. 56, § 1/HB 1000.)

The 2014 amendment, effective January 1, 2015, designated the existing provisions of subsection (a) as paragraph (a)(1) and added paragraph (a)(2); in subsection (b), inserted "or the Administrative Office of the Courts" in the first sentence, in the middle of the third sentence, and in the last sentence, in the second sentence, inserted "department shall prepare a notice for use by the claimant agency or the Administrative Office of the Courts. Such" near the beginning, and, in the third sentence, deleted "subsection (b) of" preceding "Code Section 48-7-164," in the middle, inserted "or 48-7-165.1" preceding "Code Section 48-7-165", and added the language beginning with "or the amount" and ending with "filing of an appeal" at the end; and added subsection (c).

48-7-167. Effect of setoff on refund.

Editor's notes. — Ga. L. 2014, p. 56, § 1/HB 1000, effective January 1, 2015, reenacted this Code section without change. Refer to bound volume for text of this Code section.

48-7-168. Priority of department over claimant agencies for collection by setoff.

The department has priority pursuant to subsection (c) of Code Section 48-2-35 over every claimant agency and the Administrative Office of the Courts for collection by setoff under this article. (Code 1933, § 91A-4108, enacted by Ga. L. 1980, p. 1555, § 1; Ga. L. 2014, p. 56, § 1/HB 1000.)

The 2014 amendment, effective January 1, 2015, inserted "and the Administrative Office of the Courts" in this Code section.

48-7-169. Authorization of commissioner to prescribe forms and promulgate rules and regulations.

The commissioner is authorized to prescribe forms and to promulgate rules and regulations which he or she deems necessary in order to effectuate this article. (Code 1933, § 91A-4109, enacted by Ga. L. 1980, p. 1555, § 1; Ga. L. 2014, p. 56, § 1/HB 1000.)

The 2014 amendment, effective January 1, 2015, inserted "or she" in this Code section.

48-7-170. Confidentiality exemption; providing of necessary information by commissioner to claimant agencies; nondisclosure of information by employees or prior employees of agencies; penalties.

(a) Notwithstanding Code Section 48-7-60, which prohibits disclosure by the department of the contents of taxpayer records or information, and notwithstanding any other confidentiality statute, the commissioner may provide to a claimant agency or the Administrative Office of the Courts all information necessary to accomplish and effectuate the intent of this article.

(b) The information obtained by a claimant agency or the Administrative Office of the Courts from the department in accordance with this article shall retain its confidentiality and shall only be used by a claimant agency or the Administrative Office of the Courts in the pursuit of its debt collection duties and practices. Any employee or prior employee of any claimant agency or the Administrative Office of the Courts who unlawfully discloses any such information for any other

purpose, except as otherwise specifically authorized by law, shall be subject to the same penalties specified by law for unauthorized disclosure of confidential information by an agent or employee of the department. (Code 1933, § 91A-4110, enacted by Ga. L. 1980, p. 1555, § 1; Ga. L. 2014, p. 56, § 1/HB 1000.)

The 2014 amendment, effective January 1, 2015, inserted "or the Administrative Office of the Courts" throughout.

CHAPTER 8

SALES AND USE TAXES

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ARTICLE 1

STATE SALES AND USE TAX

PART 1

GENERAL PROVISIONS

48-8-2. Definitions.

As used in this article, the term:

(1) "Alcoholic beverages" means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume.

(2) "Ancillary services" means services that are associated with or incidental to the provision of telecommunications services, including but not limited to detailed telecommunications billing service, directory assistance, vertical service, and voice mail services.

(3)(A) "Bundled transaction" means the retail sale of two or more products, except real property and services to real property, where

the products are otherwise distinct and identifiable and the products are sold for one nonitemized price. A bundled transaction does not include the sale of any products in which the sales price varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction.

(B) As used in this paragraph, the term "distinct and identifiable products" shall not include:

(i) Packaging such as containers, boxes, sacks, bags, and bottles or other materials such as wrapping, labels, tags, and instruction guides, that accompanies the retail sale of the products and are incidental or immaterial to the retail sale thereof. Examples of packaging that are incidental or immaterial include grocery sacks, shoe boxes, dry cleaning garment bags, and express delivery envelopes and boxes;

(ii) A product provided free of charge with the required purchase of another product. A product is provided free of charge if the sales price of the product purchased does not vary depending on the inclusion of the product provided free of charge; or

(iii) Items included in the sales price.

(C) As used in this paragraph, the term "one nonitemized price" shall not include a price that is separately identified by product on binding sales or other supporting sales related documentation made available to the customer in paper or electronic form including, but not limited to, an invoice, bill of sale, receipt, contract, service agreement, lease agreement, periodic notice of rates and services, rate card, or price list.

(D) A transaction that otherwise meets the definition of a bundled transaction as provided under this paragraph shall not be a bundled transaction if such transaction is:

(i) The retail sale of tangible personal property and a service where the tangible personal property is essential to the use of the service, is provided exclusively in connection with the service, and the true object of the transaction is the service;

(ii) The retail sale of services where one service is provided that is essential to the use or receipt of a second service, the first service is provided exclusively in connection with the second service, and the true object of the transaction is the second service;

(iii)(I) A transaction that includes taxable products and nontaxable products and the purchase price or sales price of the taxable products is de minimis. As used in this subparagraph,

the term "de minimis" means the seller's purchase price or sales price of the taxable product is 10 percent or less of the total purchase price or sales price of the bundled products.

(II) Sellers shall use either the purchase price or the sales price of the products to determine if the taxable products are de minimis. Sellers may not use a combination of the purchase price and sales price of the products to determine if the taxable products are de minimis.

(III) Sellers shall use the full term of a service contract to determine if the taxable products are de minimis; or

(iv) The retail sale of exempt tangible personal property and taxable tangible personal property where:

(I) The transaction includes food and food ingredients, drugs, durable medical equipment, mobility enhancing equipment, over-the-counter drugs, or prosthetic devices; and

(II) The seller's purchase price or sales price of the taxable tangible personal property is 50 percent or less of the total purchase price or sales price of the bundled tangible personal property. Sellers may not use a combination of the purchase price and sales price of the tangible personal property when making the 50 percent determination for a transaction.

(4) "Business" means any activity engaged in by any person or caused to be engaged in by any person with the object of direct or indirect gain, benefit, or advantage.

(5) "Coin operated telephone service" means a telecommunications service paid for by inserting money into a telephone accepting direct deposits of money to operate.

(6) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

(7) "Conference bridging service" means an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. Conference bridging service shall not include the telecommunications services used to reach the conference bridge.

(8) "Dealer" means every person who:

(A) Has sold at retail, used, consumed, distributed, or stored for use or consumption in this state tangible personal property and who cannot prove that the tax levied by this article has been paid on the sale at retail or on the use, consumption, distribution, or storage of the tangible personal property;

(B) Imports or causes to be imported tangible personal property from any state or foreign country for sale at retail, or for use, consumption, distribution, or storage for use or consumption in this state;

(C) Is the lessee or renter of tangible personal property and who pays to the owner of the property a consideration for the use or possession of the property in this state without acquiring title to the property;

(D) Leases or rents tangible personal property for a consideration, permitting the use or possession of the property in this state without transferring title to the property;

(E) Maintains or utilizes within this state an office, distribution center, salesroom or sales office, warehouse, service enterprise, or any other place of business, whether owned by such person or any other person, other than a common carrier acting in its capacity as such;

(F) Manufactures or produces tangible personal property for sale at retail or for use, consumption, distribution, or storage for use or consumption in this state;

(G) Sells at retail, offers for sale at retail, or has in his possession for sale at retail, or for use, consumption, distribution, or storage for use or consumption in this state tangible personal property;

(H) Solicits business by an agent, employee, representative, or any other person;

(I) Engages in the regular or systematic solicitation of a consumer market in this state, unless the dealer's only activity in this state is:

(i) Advertising or solicitation by:

(I) Direct mail, catalogs, periodicals, or advertising fliers;

(II) Means of print, radio, or television media; or

(III) Telephone, computer, the Internet, cable, microwave, or other communication system;

(ii) The delivery of tangible personal property within this state solely by common carrier or United States mail; or

(iii) To engage in convention and trade show activities as described in Section 513(d)(3)(A) of the Internal Revenue Code, so long as such activities are the dealer's sole physical presence in this state and the dealer, including any of its representatives,

agents, salespersons, canvassers, independent contractors, or solicitors, does not engage in those convention and trade show activities for more than five days, in whole or in part, in this state during any 12 month period and did not derive more than $100,000.00 of net income from those activities in this state during the prior calendar year. A retailer engaging in convention and trade show activities, as described in Section 513(d)(3)(A) of the Internal Revenue Code, is a retailer engaged in business in this state and liable for collection of the applicable sales or use tax with respect to any sale of tangible personal property occurring at the convention and trade show activities and with respect to any sale of tangible personal property made pursuant to an order taken at or during those convention and trade show activities.

The exceptions provided in divisions (i), (ii), and (iii) of this subparagraph shall not apply to any requirements under Code Section 48-8-14;

(J) Is an affiliate that sells at retail, offers for sale at retail in this state, or engages in the regular or systematic solicitation of a consumer market in this state through a related dealer located in this state unless:

(i) The in-state dealer to which the affiliate is related does not engage in any of the following activities on behalf of the affiliate:

(I) Advertising;

(II) Marketing;

(III) Sales; or

(IV) Other services; and

(ii) The in-state dealer to which the affiliate is related accepts the return of tangible personal property sold by the affiliate and also accepts the return of tangible personal property sold by any person or dealer that is not an affiliate on the same terms and conditions as an affiliate's return;

As used in this subparagraph, the term "affiliate" means any person that is related directly or indirectly through one or more intermediaries, controls, is controlled by, is under common control with, or is subject to the control of a dealer described in subparagraphs (A) through (I) of this paragraph or in this subparagraph;

(K)(i) Makes sales of tangible personal property or services that are taxable under this chapter if a related member, as defined in Code Section 48-7-28.3, other than a common carrier acting in its capacity as such, that has substantial nexus in this state:

(I) Sells a similar line of products as the person and does so under the same or a similar business name; or

(II) Uses trademarks, service marks, or trade names in this state that are the same or substantially similar to those used by the person.

(ii) The presumption that a person described in this subparagraph qualifies as a dealer in this state may be rebutted by showing that the person does not have a physical presence in this state and that any in-state activities conducted on its behalf are not significantly associated with the person's ability to establish and maintain a market in this state;

(L)(i) Makes sales of tangible personal property or services that are taxable under this chapter if any other person, other than a common carrier acting in its capacity as such, who has a substantial nexus in this state:

(I) Delivers, installs, assembles, or performs maintenance services for the person's customers within this state;

(II) Facilitates the person's delivery of property to customers in this state by allowing the person's customers to pick up property sold by the person at an office, distribution facility, warehouse, storage place, or similar place of business maintained by the person in this state; or

(III) Conducts any other activities in this state that are significantly associated with the person's ability to establish and maintain a market in this state for the person's sales.

(ii) The presumption that a person described in this subparagraph qualifies as a dealer in this state may be rebutted by showing that the person does not have a physical presence in this state and that any in-state activities conducted on its behalf are not significantly associated with the person's ability to establish and maintain a market in this state;

(M)(i) Enters into an agreement with one or more other persons who are residents of this state under which the resident, for a commission or other consideration, based on completed sales, directly or indirectly refers potential customers, whether by a link on an Internet website, an in-person oral presentation, telemarketing, or otherwise, to the person, if the cumulative gross receipts from sales by the person to customers in this state who are referred to the person by all residents with this type of an agreement with the person is in excess of $50,000.00 during the preceding 12 months.

(ii) The presumption that a person described in this subparagraph is a dealer in this state may be rebutted by submitting proof that the residents with whom the person has an agreement did not engage in any activity within this state that was significantly associated with the person's ability to establish or maintain the person's market in the state during the preceding 12 months. Such proof may consist of sworn written statements from all of the residents with whom the person has an agreement stating that they did not engage in any solicitation in this state on behalf of the person during the preceding year, provided that such statements were provided and obtained in good faith. This subparagraph shall take effect December 31, 2012, and shall apply to sales made, uses occurring, and services rendered on or after December 31, 2012, without regard to the date the person and the resident entered into the agreement described in this subparagraph;

(N) Notwithstanding any of the provisions contained in this paragraph, with respect to a person that is not a resident or domiciliary of Georgia, that does not engage in any other business or activity in Georgia, and that has contracted with a commercial printer for printing to be conducted in Georgia, such person shall not be deemed a dealer in Georgia merely because such person:

(i) Owns tangible or intangible property which is located at the Georgia premises of a commercial printer for use by such printer in performing services for the owner;

(ii) Makes sales and distributions of printed material produced at and shipped or distributed from the Georgia premises of the commercial printer;

(iii) Performs activities of any kind at the Georgia premises of the commercial printer which are directly related to the services provided by the commercial printer; or

(iv) Has printing, including any printing related activities, and distribution related activities performed by the commercial printer in Georgia for or on its behalf,

nor shall such person, absent any contact with Georgia other than with or through the use of the commercial printer or the use of the United States Postal Service or a common carrier, have an obligation to collect sales or use tax from any of its customers located in Georgia based upon the activities described in divisions (i) through (iv) of this subparagraph. In no event described in this subparagraph shall such person be considered to have a fixed place of business in Georgia at either the commercial printer's premises or at any place where the commercial printer performs services on behalf of that person;

(O) Any ruling, agreement, or contract, whether written or oral and whether express or implied, between a person and this state's executive branch or any other state agency or department stating, agreeing, or ruling that such person is not a dealer required to collect sales and use tax in this state despite the presence of a warehouse, distribution center, or fulfillment center in this state that is owned or operated by the person or a related member shall be null and void unless it is specifically approved by a majority vote of each body of the General Assembly. For purposes of this subparagraph, the term "related member" has the same meaning as in Code Section 48-7-28.3;

(P) Each dealer shall collect the tax imposed by this article from the purchaser, lessee, or renter, as applicable, and no action seeking either legal or equitable relief on a sale, lease, rental, or other transaction may be had in this state by the dealer unless the dealer has fully complied with this article; or

(Q) The commissioner shall promulgate such rules and regulations necessary to administer this paragraph, including other such information, applications, forms, or statements as the commissioner may reasonably require.

(9) "Delivered electronically" means delivered to the purchaser by means other than tangible storage media.

(10) "Delivery charges" means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing. Delivery charges shall not include postage charges for the delivery of direct mail when the postage charge is passed on dollar-for-dollar without being marked up to the purchaser of the direct mail and separately stated on an invoice or other similar billing document given to the purchaser.

(11) "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.

(11.1) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:

(A) Contains one or more of the following dietary ingredients:

(i) A vitamin;

(ii) A mineral;

(iii) An herb or other botanical;

(iv) An amino acid;

(v) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(vi) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in this subparagraph;

(B) Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(C) Is required to be labeled as a dietary supplement, identifiable by the "Supplements Facts" box found on the label as required pursuant to 21 C.F.R. Section 101.36.

(12) "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the costs of the items are not billed directly to the recipients. Direct mail includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. Direct mail does not include multiple items of printed material delivered to a single address.

(13) "Directory assistance" means an ancillary service of providing telephone number information or address information, or both.

(14) "Drug" means a compound, substance, or preparation, and any component of a compound, substance, or preparation, other than food and food ingredients, dietary supplements, or alcoholic beverages:

(A) Recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or supplement to any of them;

(B) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or

(C) Intended to affect the structure or any function of the body.

(15) "Durable medical equipment" means equipment including repair and replacement parts for the same, but does not include mobility enhancing equipment, which:

(A) Can withstand repeated use;

(B) Is primarily and customarily used to serve a medical purpose;

(C) Generally is not useful to a person in the absence of illness or injury; and

(D) Is not worn in or on the body.

(16) "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. Food and food ingredients shall not include alcoholic beverages, dietary supplements, or tobacco.

(17) "Lease or rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend. Lease or rental includes agreements covering motor vehicles and trailers where the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 U.S.C. Section 7701(h)(1). Lease or rental shall not include:

(A) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(B) A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price does not exceed the greater of $100.00 or 1 percent of the total required payments; or

(C) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subparagraph, an operator must do more than maintain, inspect, or install the tangible personal property.

(18) "Load and leave" means delivery to the purchaser by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser.

(19) "Mobile wireless service" means a telecommunications service that is transmitted, conveyed, or routed regardless of the technology used, by which the origination or termination points, or both, of the transmission, conveyance, or routing are not fixed, including, by way of example only, telecommunications services that are provided by a commercial mobile radio service provider.

(20) "Mobility enhancing equipment" means equipment including repair and replacement parts to the same, but does not include durable medical equipment, which:

(A) Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle;

(B) Is not generally used by persons with normal mobility; and

(C) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

(20.1) "Over-the-counter drug" means a drug that contains a label that identifies the product as a drug as required by 21 C.F.R. Section 201.66. The over-the-counter drug label includes:

(A) A "Drug Facts" panel; or

(B) A statement of the "active ingredient(s)" with a list of those ingredients contained in the compound, substance, or preparation.

(21) "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, place of primary use must be within the licensed service area of the home service provider.

(22) "Prepaid calling service" means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(23) "Prepaid local tax" means any local sales and use tax which is levied on the sale or use of motor fuel and imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to constitutional amendment; by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, known as the "Metropolitan Atlanta Rapid Transit Authority Act of 1965"; or by or pursuant to Article 2, 2A, 3, or 4 of this chapter. Such tax is based on the same average retail sales price as compiled by the Energy Information Agency of the United States Department of Energy, the Oil Pricing Information Service, or a similar reliable published index less taxes imposed under Code Section 48-9-3 and all local sales and use or excise taxes levied on motor fuel. Such price shall be used to compute the prepaid sales tax rate for local jurisdictions by multiplying such retail price by the applicable rate imposed by the jurisdiction. The person collecting and reporting the prepaid local tax for the local jurisdiction shall provide a schedule as to which jurisdiction these collections relate. This determination shall be

based upon the shipping papers of the conveyance that delivered the motor fuel to the dealer or consumer in the local jurisdiction. A seller may rely upon the representation made by the purchaser as to which jurisdiction the shipment is bound and prepare shipping papers in accordance with those instructions.

(24) Reserved.

(25) "Prepaid wireless calling service" means a telecommunications service that provides the right to utilize mobile wireless service as well as other nontelecommunications services including the download of digital products delivered electronically, content, and ancillary services, which must be paid for in advance that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(26) Reserved.

(27) "Prepared food" means:

(A) Food:

(i) Sold in a heated state or heated by the seller;

(ii) With two or more food ingredients mixed or combined by the seller for sale as a single item; or

(iii) Sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food; and

(B) Prepared food shall not include food:

(i) That is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as in Chapter 3, part 401.11 of the United States Food and Drug Administration Food Code so as to prevent food borne illnesses;

(ii) Sold by a seller whose proper primary North American Industrial Classification System code is subsector 311, food manufacturing, except for industry group 3118, bakeries and tortilla manufacturing, if sold without eating utensils provided by the seller; or

(iii) Sold by a seller whose proper primary North American Industrial Classification System code is industry group 3121, beverage manufacturing.

(28) "Prescription" means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of this state.

(28.1) "Prewritten computer software" means computer software, including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be other than prewritten computer software. Prewritten computer software includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the specific purchaser. Where a person modifies or enhances computer software of which the person is not the author or creator, the person shall be deemed to be the author or creator only of such person's modifications or enhancements. Prewritten computer software or a prewritten portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software; provided, however, that where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute prewritten computer software.

(29) "Prosthetic device" means a replacement, corrective, or supportive device including repair and replacement parts for the same worn on or in the body to:

(A) Artificially replace a missing portion of the body;

(B) Prevent or correct physical deformity or malfunction; or

(C) Support a weak or deformed portion of the body.

Prosthetic device shall not include hearing aids.

(30) "Purchase price" applies to the measure subject to use tax and has the same meaning as sales price.

(31) "Retail sale" or a "sale at retail" means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent. Sales for resale must be made in strict compliance with the commissioner's rules and regulations. Any dealer making a sale for resale which is not in strict compliance with the commissioner's rules and regulations shall be liable for and shall pay the tax. The terms "retail sale" or "sale at retail" include but are not limited to the following:

(A) Except as otherwise provided in this chapter, the sale of natural or artificial gas, oil, electricity, solid fuel, transportation, local telephone services, alcoholic beverages, and tobacco products, when made to any purchaser for purposes other than resale;

(B) The sale or charges for any room, lodging, or accommodation furnished to transients by any hotel, inn, tourist camp, tourist cabin, or any other place in which rooms, lodgings, or accommodations are regularly furnished to transients for a consideration. This tax shall not apply to rooms, lodgings, or accommodations supplied for a period of 90 continuous days or more;

(C) Sales of tickets, fees, or charges made for admission to, or voluntary contributions made to places of, amusement, sports, or entertainment including, but not limited to:

(i) Billiard and pool rooms;

(ii) Bowling alleys;

(iii) Amusement devices;

(iv) Musical devices;

(v) Theaters;

(vi) Opera houses;

(vii) Moving picture shows;

(viii) Vaudeville;

(ix) Amusement parks;

(x) Athletic contests including, but not limited to, wrestling matches, prize fights, boxing and wrestling exhibitions, football games, and baseball games;

(xi) Skating rinks;

(xii) Race tracks;

(xiii) Public bathing places;

(xiv) Public dance halls; and

(xv) Any other place at which any exhibition, display, amusement, or entertainment is offered to the public or any other place where an admission fee is charged;

(D) Charges made for participation in games and amusement activities;

(E) Sales of tangible personal property to persons for resale when there is a likelihood that the state will lose tax funds due to the difficulty of policing the business operations because:

(i) Of the operation of the business;

(ii) Of the very nature of the business;

(iii) Of the turnover of so-called independent contractors;

(iv) Of the lack of a place of business in which to display a certificate of registration;

(v) Of the lack of a place of business in which to keep records;

(vi) Of the lack of adequate records;

(vii) The persons are minors or transients;

(viii) The persons are engaged in essentially service businesses; or

(ix) Of any other reasonable reason.

The commissioner may promulgate rules and regulations requiring vendors of persons described in this subparagraph to collect the tax imposed by this article on the retail price of the tangible personal property. The commissioner shall refuse to issue certificates of registration and may revoke certificates of registration issued in violation of his rules and regulations;

(F) Charges, which applied to sales of telephone service, made for local exchange telephone service, except coin operated telephone service, except as otherwise provided in subparagraph (G) of this paragraph;

(G) If the price is attributable to products that are taxable and products that are nontaxable, the portion of the price attributable to the nontaxable products may be subject to tax unless the provider can identify by reasonable and verifiable standards such portion from its books and records that are kept in the regular course of business for other purposes, including, but not limited to, nontax purposes. If the price is attributable to products that are subject to tax at different tax rates, the total price may be treated as attributable to the products subject to tax at the highest tax rate unless the provider can identify by reasonable and verifiable standards the portion of the price attributable to the products subject to tax at the lower rate from the provider's books and records that are kept in the regular course of business for other purposes, including, but not limited to, nontax purposes; or

(H) Repealed.

(32) "Retailer" means every person making sales at retail or for distribution, use, consumption, or storage for use or consumption in this state and has the same meaning as "seller" in Code Section 48-8-161.

(33)(A) "Sale" means any transfer of title or possession, transfer of title and possession, exchange, barter, lease, or rental, conditional

or otherwise, in any manner or by any means of any kind of tangible personal property for a consideration except as otherwise provided in subparagraph (B) of this paragraph and includes, but is not limited to:

(i) The fabrication of tangible personal property for consumers who directly or indirectly furnish the materials used in such fabrication;

(ii) The furnishing, repairing, or serving for a consideration of any tangible personal property consumed on the premises of the person furnishing, repairing, or serving the tangible personal property; or

(iii) A transaction by which the possession of property is transferred but the seller retains title as security for the payment of the price.

(B) Notwithstanding a dealer's physical presence, in the case of a motor vehicle retail sale, excluding lease or rental, the taxable situs of the transaction for the purposes of collecting local sales and use taxes shall be the county of motor vehicle registration of the purchaser.

(34)(A) "Sales price" applies to the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise without any deduction for the following:

(i) The seller's cost of the property sold;

(ii) The cost of materials used, labor, or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;

(iii) Charges by the seller for any services necessary to complete the sale; and

(iv) Delivery charges.

(B) Sales price shall not include:

(i) Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;

(ii) Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser;

(iii) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser;

(iv) Installation charges if they are separately stated on the invoice, billing, or similar document given to the purchaser;

(v) Telecommunications nonrecurring charges if they are separately stated on the invoice, billing, or similar document; and

(vi) Credit for any trade-in.

(C) Sales price shall include consideration received by the seller from third parties if:

(i) The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;

(ii) The seller has an obligation to pass the price reduction or discount through to the purchaser;

(iii) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

(iv) One of the following criteria is met:

(I) The purchaser presents a coupon, certificate, or other documentation to the seller to claim a price reduction or discount where the coupon, certificate, or documentation is authorized, distributed, or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate, or documentation is presented;

(II) The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount; provided, however, that a preferred customer card that is available to any patron shall not constitute membership in such a group; or

(III) The price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser.

(35) "Storage" means any keeping or retention in this state of tangible personal property for use or consumption in this state or for any purpose other than sale at retail in the regular course of business.

(36) "Streamlined sales tax agreement" means the Streamlined Sales and Use Tax Agreement under Code Section 48-8-162.

(37) "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses. Tangible personal property includes electricity, water, gas, steam, and prewritten computer software. Tangible personal property does not mean stocks, bonds, notes, insurance, or other obligations or securities.

(38) "Telecommunications nonrecurring charges" means an amount billed for the installation, connection, change, or initiation of telecommunications service received by the customer.

(39) "Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term telecommunications service includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value added. Telecommunications service shall not include:

(A) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where such purchaser's primary purpose for the underlying transaction is the processed data or information;

(B) Installation or maintenance of wiring or equipment on a customer's premises;

(C) Tangible personal property;

(D) Advertising, including but not limited to directory advertising;

(E) Billing and collection services provided to third parties;

(F) Internet access service;

(G) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, and routing of such services by the programming service provider. Radio and television audio and video programming services shall include but not be limited to cable service as defined in 47 U.S.C. Section 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 C.F.R. Section 20.3;

(H) Ancillary services; or

(I) Digital products delivered electronically, including but not limited to software, music, video, reading materials, or ring tones.

(39.1) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that includes tobacco.

(40) "Use" means the exercise of any right or power over tangible personal property incident to the ownership of the property including, but not limited to, the sale at retail of the property in the regular course of business.

(41) "Use tax" includes the use, consumption, distribution, and storage of tangible personal property as defined in this article.

(42) "Vertical service" means an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services.

(43) "Voice mail service" means an ancillary service that enables the customer to store, send, or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service. (Ga. L. 1951, p. 360, §§ 3, 4; Ga. L. 1960, p. 153, § 3; Ga. L. 1971, p. 85, § 1; Ga. L. 1978, p. 1664, § 1; Code 1933, § 91A-4501, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, §§ 81-84; Ga. L. 1980, p. 10, § 22; Ga. L. 1982, p. 3, § 48; Ga. L. 1990, p. 1243, § 1; Ga. L. 1992, p. 1521, § 1; Ga. L. 1994, p. 928, § 4A; Ga. L. 1995, p. 10, § 48; Ga. L. 1996, p. 220, § 7; Ga. L. 1998, p. 124, § 3; Ga. L. 2002, p. 415, § 48; Ga. L. 2002, p. 975, § 1; Ga. L. 2003, p. 355, § 3; Ga. L. 2003, p. 665, § 10; Ga. L. 2005, p. 788, § 1/HB 22; Ga. L. 2006, p. 59, § 1/HB 111; Ga. L. 2007, p. 309, § 1/HB 219; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2010, p. 662, § 1/HB 1221; Ga. L. 2011, p. 38, §§ 2, 3/HB 168; Ga. L. 2011, p. 674, §§ 1-2, 1-3/HB 117; Ga. L. 2012, p. 257, § 6-1/HB 386; Ga. L. 2012, p. 694, § 3/HB 729; Ga. L. 2013, p. 141, § 48/HB 79; Ga. L. 2014, p. 700, § 1/HB 816; Ga. L. 2014, p. 866, § 48/SB 340; Ga. L. 2015, p. 5, § 48/HB 90; Ga. L. 2015, p. 236, § 5-2/HB 170.)

The 2014 amendments. — The first 2014 amendment, effective July 1, 2014, added the second sentence in paragraph (10). The second 2014 amendment, effective April 29, 2014, part of an Act to revise, modernize, and correct the Code, revised punctuation throughout this Code section.

The 2015 amendments. — The first 2015 amendment, effective March 13, 2015, part of an Act to revise, modernize, and correct the Code, deleted paragraph (30.1) which was repealed and revised punctuation in paragraphs (37), (39), and (43). The second 2015 amendment, effective July 1, 2015, substituted "as compiled by the Energy Information Agency of the United States Department of Energy, the Oil Pricing Information Service, or a similar reliable published index less taxes imposed under Code Section 48-9-3 and all local sales and use or excise taxes levied on motor fuel" for "as set forth in subparagraph (b)(2)(B) of Code Section 48-9-14" in the second sentence of para-

graph (23); and substituted "Reserved." for the former provisions of paragraph (24), which read: "'Prepaid state tax' means the tax levied under Code Section 48-8-30 in conjunction with Code Section 48-8-3.1 and Code Section 48-9-14 on the retail sale of motor fuels for highway use and collected prior to that retail sale. This tax is based upon the average retail sales price as set forth in Code Section 48-9-14." See editor's note for applicability.

Editor's notes. — Ga. L. 2011, p. 674 provided for the automatic repeal of subparagraph (31)(H) and paragraphs (30.1) and (34.1), effective June 30, 2014.

Ga. L. 2015, p. 236, § 8-1/HB 170, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Transportation Funding Act of 2015.'"

Ga. L. 2015, p. 236, § 8-2/HB 170, not codified by the General Assembly, provides that: "It is the intention of the General Assembly, subject to appropriations and other constitutional obligations of this state, that year to year revenue increases be prioritized to fund education, transportation, and health care in this state."

Ga. L. 2015, p. 236, § 9-1(b)/HB 170, not codified by the General Assembly, provides that: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of this Act." This Act became effective July 1, 2015.

48-8-3. (For effective date, see note.) Exemptions.

The sales and use taxes levied or imposed by this article shall not apply to:

(1) Sales to the United States government, this state, any county or municipality of this state, or any bona fide department of such governments when paid for directly to the seller by warrant on appropriated government funds;

(2) Transactions in which tangible personal property is furnished by the United States government or by a county or municipality of this state to any person who contracts to perform services for the governmental entity for the installation, repair, or extension of any public water, gas, or sewage system of the governmental entity when the tangible personal property is installed for general distribution purposes, notwithstanding Code Section 48-8-63 or any other provision of this article. No exemption is granted with respect to tangible personal property installed to serve a particular property site;

(3) The federal retailers' excise tax if the tax is billed to the consumer separately from the selling price of the product or from the tax imposed by Article 1 of Chapter 9 of this title relating to motor fuel taxes;

(4) Sales by counties and municipalities arising out of their operation of any public transit facility and sales by public transit authorities or charges by counties, municipalities, or public transit authorities for the transportation of passengers upon their conveyances;

(5)(A) Fares and charges, except charges for charter and sightseeing service, collected by an urban transit system for the transportation of passengers.

(B) As used in this paragraph, the term:

(i) "Public transit system primarily urban in character" shall include a transit system operated by any entity which provides passenger transportation services by means of motor vehicles having passenger-carrying capacity within or between standard metropolitan areas and urban areas, as those terms are defined in Code Section 32-2-3, of this state.

(ii) "Urban transit system" means a public transit system primarily urban in character which is operated by a street railroad company or a motor carrier, is subject to the jurisdiction of the Department of Public Safety, and whose fares and charges are regulated by the Department of Public Safety, or is operated pursuant to a franchise contract with a municipality of this state so that its fares and charges are regulated by or are subject to the approval of the municipality. An urban transit system certificate shall be issued by the Department of Public Safety, or by the municipality which has regulatory authority, upon an affirmative showing that the applicant operates an urban transit system. The certificate shall be obtained and filed with the commissioner and shall continue in effect so long as the holder of such certificate qualifies as an urban transit system. Any urban transit system certificate granted prior to January 1, 2002, shall be deemed valid as of the date it was issued;

(6) Sales to any hospital authority created by Article 4 of Chapter 7 of Title 31;

(6.1) Sales to any housing authority created by Article 1 of Chapter 3 of Title 8, the "Housing Authorities Law";

(6.2) Sales to any local government authority created on or after January 1, 1980, by local law, which authority has as its principal purpose or one of its principal purposes the construction, ownership, or operation of a coliseum and related facilities to be used for athletic contests, games, meetings, trade fairs, expositions, political conventions, agricultural events, theatrical and musical performances, conventions, or other public entertainments or any combination of such purposes;

(6.3) Sales to any agricultural commodities commission created by and regulated pursuant to Chapter 8 of Title 2;

(7) Sales of tangible personal property and services to a nonprofit licensed nursing home, nonprofit licensed in-patient hospice, or a

nonprofit general or mental hospital used exclusively by such nursing home, in-patient hospice, or hospital in performing a general nursing home, in-patient hospice, hospital, or mental hospital treatment function in this state when such nursing home, in-patient hospice, or hospital is a tax exempt organization under the Internal Revenue Code and obtains an exemption determination letter from the commissioner;

(7.05)(A) For the period commencing on July 1, 2015, and ending on June 30, 2018, sales of tangible personal property to a nonprofit health center in this state which has been established under the authority of and is receiving funds pursuant to the United States Public Health Service Act, 42 U.S.C. Section 254b if such health clinic obtains an exemption determination letter from the commissioner.

(B)(i) For the purposes of this paragraph, the term "local sales and use tax" shall mean any sales tax, use tax, or local sales and use tax which is levied and imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to constitutional amendment; by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the "Metropolitan Atlanta Rapid Transit Authority Act of 1965"; by or pursuant to Article 2, 2A, 3, or 4 of this chapter.

(ii) The exemption provided for in subparagraph (A) of this paragraph shall not apply to any local sales and use tax levied or imposed at any time.

(C) Notwithstanding Code Sections 48-2-15, 48-7-60, and 48-7-61, any taxpayer seeking to claim the exemption provided for within subparagraph (A) of this paragraph shall electronically submit to the department, at the time of application for the exemption and any such annual renewal, the total number of patients treated in the previous calendar year, the average monthly number of full-time employees, and the total amount of exempt purchases made by the taxpayer in the preceding calendar year. The department shall then issue a report to the chairpersons of the House Committee on Ways and Means and the Senate Finance Committee detailing the total number of patients treated, average monthly number of full-time employees, and the total amount of sales and use tax exempted sales for the previous calendar year, by June 30 each year;

(7.1) Sales of tangible personal property and services to a nonprofit organization, the primary function of which is the provision of services to intellectually disabled persons, when such organization is

a tax exempt organization under the Internal Revenue Code and obtains an exemption determination letter from the commissioner;

(7.2) Sales of tangible personal property or services to any chapter of the Georgia State Society of the Daughters of the American Revolution which is tax exempt under Section 501(c)(3) of the Internal Revenue Code and obtains an exemption determination letter from the commissioner;

(7.3)(A) For the period commencing July 1, 2015, and ending June 30, 2018, sales of tangible personal property and services to a nonprofit volunteer health clinic which primarily treats indigent persons with incomes below 200 percent of the federal poverty level and which property and services are used exclusively by such volunteer health clinic in performing a general treatment function in this state when such volunteer health clinic is a tax exempt organization under the Internal Revenue Code and obtains an exemption determination letter from the commissioner.

(B) Notwithstanding Code Sections 48-2-15, 48-7-60, and 48-7-61, any taxpayer seeking to claim the exemption provided for within subparagraph (A) of this paragraph shall electronically submit to the department, at the time of application for the exemption and any such annual renewal, the total number of patients treated in the previous calendar year, the average monthly number of full-time employees, and the total amount of exempt purchases made by the taxpayer in the preceding calendar year. The department shall then issue a report to the chairpersons of the House Committee on Ways and Means and the Senate Finance Committee detailing the total number of patients treated, average monthly number of full-time employees, and the total amount of sales and use tax exempted sales for the previous calendar year, by June 30 each year;

(8) Sales of tangible personal property and services to the University System of Georgia and its educational units;

(9) Sales of tangible personal property and services to be used exclusively for educational purposes by those private colleges and universities in this state whose academic credits are accepted as equivalents by the University System of Georgia and its educational units;

(10) Sales of tangible personal property and services to be used exclusively for educational purposes by those bona fide private elementary and secondary schools which have been approved by the commissioner as organizations eligible to receive tax deductible contributions if application for exemption is made to the department and proof of the exemption is established;

(11) Sales of tangible personal property or services to, and the purchase of tangible personal property or services by, any educational or cultural institute which:

(A) Is tax exempt under Section 501(c)(3) of the Internal Revenue Code;

(B) Furnishes at least 50 percent of its programs through universities and other institutions of higher education in support of their educational programs;

(C) Is paid for by government funds of a foreign country; and

(D) Is an instrumentality, agency, department, or branch of a foreign government operating through a permanent location in this state;

(12) Food and food ingredients and prepared food sold and served to pupils and employees of public schools as part of a school lunch program;

(13) Sales of prepared food and food and food ingredients consumed by pupils and employees of bona fide private elementary and secondary schools which have been approved by the commissioner as organizations eligible to receive tax deductible contributions when application for exemption is made to the department and proof of the exemption is established;

(14) Sales of objects of art and of anthropological, archeological, geological, horticultural, or zoological objects or artifacts and other similar tangible personal property to or for the use by any museum or organization which is tax exempt under Section 501(c)(3) of the Internal Revenue Code of such tangible personal property for display or exhibition in a museum within this state when the museum is open to the public and has been approved by the commissioner as an organization eligible to receive tax deductible contributions;

(15) Sales:

(A) Of any religious paper in this state when the paper is owned and operated by religious institutions or denominations and no part of the net profit from the operation of the institution or denomination inures to the benefit of any private person;

(B) By religious institutions or denominations when:

(i) The sale results from a specific charitable fundraising activity;

(ii) The number of days upon which the fundraising activity occurs does not exceed 30 in any calendar year;

(iii) No part of the gross sales or net profits from the sales inures to the benefit of any private person; and

(iv) The gross sales or net profits from the sales are used for the purely charitable purposes of:

(I) Relief to the aged;

(II) Church related youth activities;

(III) Religious instruction or worship; or

(IV) Construction or repair of church buildings or facilities;

(15.1) Sales of pipe organs or steeple bells to any church which is qualified as an exempt religious organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended;

(16) The sale or use of Holy Bibles, testaments, and similar books commonly recognized as being Holy Scripture regardless of by or to whom sold;

(17) The sale of fuel and supplies for use or consumption aboard ships plying the high seas either in intercoastal trade between ports in this state and ports in other states of the United States or its possessions or in foreign commerce between ports in this state and ports of foreign countries;

(18) Charges made for the transportation of tangible personal property except delivery charges by the seller associated with the sale of taxable tangible personal property, including, but not limited to, charges for accessorial services such as refrigeration, switching, storage, and demurrage made in connection with interstate and intrastate transportation of the property;

(19) All tangible personal property purchased outside of this state by persons who at the time of purchase are not domiciled in this state but who subsequently become domiciled in this state and bring the property into this state for the first time as a result of the change of domicile, if the property is not brought into this state for use in a trade, business, or profession;

(20) The sale of water delivered to consumers through water mains, lines, or pipes;

(21) Sales, transfers, or exchanges of tangible personal property made as a result of a business reorganization when the owners, partners, or stockholders of the business being reorganized maintain the same proportionate interest or share in the newly formed business reorganization;

(22) Professional, insurance, or personal service transactions which involve sales as inconsequential elements for which no separate charges are made;

(23) Fees or charges for services rendered by repairmen for which a separate charge is made;

(24) The rental of videotape or motion picture film to any person who charges an admission fee to view such film or videotape;

(25) (For effective date, see note.) On and after July 1, 2017, fares of for-hire vehicles for which taxi services, limousine carriers, ride share network services, or the owners of such vehicles have purchased a for-hire master license in lieu of paying sales and use taxes on fares pursuant to the provisions of subsection (b) of Code Section 40-2-168. This provision shall not relieve taxi services, limousine carriers, transportation referral services, transportation referral service providers, or ride share service networks of sales and use tax liability on fares incurred prior to the purchase of such for-hire master license. This paragraph shall be repealed by operation of law on July 1, 2017;

(26) Reserved;

(27) Reserved;

(28) Reserved;

(29) Reserved;

(29.1) Reserved;

(30) The sale of a vehicle to a service-connected disabled veteran when the veteran received a grant from the United States Department of Veterans Affairs to purchase and specially adapt the vehicle to his disability;

(31) The sale of tangible personal property manufactured or assembled in this state for export when delivery is taken outside this state;

(32) Aircraft, watercraft, motor vehicles, and other transportation equipment manufactured or assembled in this state when sold by the manufacturer or assembler for use exclusively outside this state and when possession is taken from the manufacturer or assembler by the purchaser within this state for the sole purpose of removing the property from this state under its own power when the equipment does not lend itself more reasonably to removal by other means;

(33)(A) The sale of aircraft, watercraft, railroad locomotives and rolling stock, motor vehicles, and major components of each, which will be used principally to cross the borders of this state in the service of transporting passengers or cargo by common carriers and by carriers who hold common carrier and contract carrier authority in interstate or foreign commerce under authority granted by the

United States government. Replacement parts installed by carriers in such aircraft, watercraft, railroad locomotives and rolling stock, and motor vehicles which become an integral part of the craft, equipment, or vehicle shall also be exempt from all taxes under this article;

(B) In lieu of any tax under this article which would apply to the purchase, sale, use, storage, or consumption of the tangible personal property described in this paragraph but for this exemption, the tax under this article shall apply with respect to all fuel purchased and delivered within this state by or to any common carrier and with respect to all fuel purchased outside this state and stored in this state irrespective, in either case, of the place of its subsequent use;

(33.1)(A) The sale or use of jet fuel to or by a qualifying airline at a qualifying airport, to the extent provided in subparagraphs (B) and (C) of this paragraph.

(B) For the period of time beginning July 1, 2012, and ending on June 30, 2015, the sale or use of jet fuel to or by a qualifying airline at a qualifying airport shall be exempt from 1 percent of the 4 percent state sales and use tax.

(C) The sale or use of jet fuel to or by a qualifying airline at a qualifying airport shall be exempt at all times from the sales or use tax levied and imposed as authorized pursuant to Part 1 of Article 3 of this chapter. As used in this subparagraph, the term "qualifying airport" means any airport in this state that has had more than 750,000 takeoffs and landings during a calendar year, and the term "qualifying airline" shall have the same meaning as set forth in subparagraph (E) of this paragraph.

(D) Except as provided for in subparagraph (C) of this paragraph, this exemption shall not apply to any other local sales and use tax levied or imposed at any time in any area consisting of less than the entire state, however authorized, not to exceed the rate at which such taxes were levied as of January 1, 2014, including, but not limited to, such taxes authorized by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the "Metropolitan Atlanta Rapid Transit Authority Act of 1965," or such taxes as authorized by or pursuant to Part 2 of Article 3 or Article 2, 2A, or 4 of this chapter.

(E) For purposes of subparagraph (B) of this paragraph and paragraph (2) of subsection (d) of Code Section 48-8-241, a "qualifying airline" shall mean any person which is authorized by the Federal Aviation Administration or appropriate agency of the United States to operate as an air carrier under an air carrier

operating certificate and which provides regularly scheduled flights for the transportation of passengers or cargo for hire.

(F) For purposes of subparagraph (B) of this paragraph and paragraph (2) of subsection (d) of Code Section 48-8-241, the term "qualifying airport" means a certificated air carrier airport in Georgia.

(G) On or after July 1, 2017, revenue derived from the levy of sales and use taxes on jet fuel shall be used for a state aviation program or airport related purposes to the extent required to comply with 49 U.S.C. Sections 47107(b) and 47113. Any portion of such revenue so derived which is in excess of the amount required for purposes of such compliance with federal law may be appropriated by the General Assembly for other purposes.

(H) The commissioner shall adopt rules and regulations to carry out the provisions of this paragraph;

(34) Reserved;

(34.1)(A) The sale of primary material handling equipment which is used for the handling and movement of tangible personal property and racking systems used for the conveyance and storage of tangible personal property in a warehouse or distribution facility located in this state when such equipment is either part of an expansion worth $5 million or more of an existing warehouse or distribution facility or part of the construction of a new warehouse or distribution facility where the total value of all real and personal property purchased or acquired by the taxpayer for use in the warehouse or distribution facility is worth $5 million or more.

(B) In order to qualify for the exemption provided for in subparagraph (A) of this paragraph, a warehouse or distribution facility may not make retail sales from such facility to the general public if the total of the retail sales equals or exceeds 15 percent of the total revenues of the warehouse or distribution facility. If retail sales are made to the general public by a warehouse or distribution facility and at any time the total of the retail sales equals or exceeds 15 percent of the total revenues of the facility, the taxpayer will be disqualified from receiving such exemption as of the date such 15 percent limitation is met or exceeded. The taxpayer may be required to repay any tax benefits received under subparagraph (A) of this paragraph on or after that date plus penalty and interest as may be allowed by law;

(34.2)(A) The sale or use of machinery or equipment, or both, which is used in the remanufacture of aircraft engines or aircraft engine parts or components in a remanufacturing facility located in

this state. For purposes of this paragraph, "remanufacture of aircraft engines or aircraft engine parts or components" means the substantial overhauling or rebuilding of aircraft engines or aircraft engine parts or components.

(B) Any person making a sale of machinery or equipment, or both, for the remanufacture of aircraft engines or aircraft engine parts or components shall collect the tax imposed on the sale by this article unless the purchaser furnishes a certificate issued by the commissioner certifying that the purchaser is entitled to purchase the machinery or equipment without paying the tax;

(34.3) Reserved;

(34.4)(A) Notwithstanding any provision of Code Section 48-8-63 to the contrary, sales of tangible personal property to, or used in or for the construction of, an alternative fuel facility primarily dedicated to the production and processing of ethanol, biodiesel, butanol, and their by-products, when such fuels are derived from biomass materials such as agricultural products, or from animal fats, or the wastes of such products or fats.

(B) As used in this paragraph, the term:

(i) "Alternative fuel facility" means any facility located in this state which is primarily dedicated to the production and processing of ethanol, biodiesel, butanol, and their by-products for sale.

(ii) "Used in or for the construction" means any tangible personal property incorporated into a new alternative fuel facility that loses its character of tangible personal property. Such term does not mean tangible personal property that is temporary in nature, leased or rented, tools, or other items not incorporated into the facility.

(C) Any person making a sale of tangible personal property for the purpose specified in this paragraph shall collect the tax imposed on this sale unless the purchaser furnishes an exemption certificate issued by the commissioner certifying that the purchaser is entitled to purchase the tangible personal property without payment of tax.

(D) Any corporation, partnership, limited liability company, or any other entity or person that qualifies for this exemption must conduct at least a majority of its business with entities or persons with which it has no affiliation.

(E) The exemption provided for under subparagraph (A) of this paragraph shall not apply to sales of tangible personal property that occur after the production and processing of biodiesel, ethanol,

butanol, and their by-products has begun at the alternative fuel facility.

(F) The exemption provided for under subparagraph (A) of this paragraph shall apply only to sales occurring during the period July 1, 2007, through June 30, 2012.

(G) The commissioner shall promulgate any rules and regulations necessary to implement and administer this paragraph;

(35) Reserved;

(36)(A) The sale of machinery and equipment and any repair, replacement, or component parts for such machinery and equipment which is used for the primary purpose of reducing or eliminating air or water pollution;

(B) Any person making a sale of machinery and equipment or repair, replacement, or component parts for such machinery and equipment for the purposes specified in this paragraph shall collect the tax imposed on the sale by this article unless the purchaser furnishes him with a certificate issued by the commissioner certifying that the purchaser is entitled to purchase the machinery and equipment or repair, replacement, or component parts for such machinery and equipment without paying the tax;

(36.1)(A) The sale of machinery and equipment which is incorporated into any qualified water conservation facility and used for water conservation.

(B) As used in this paragraph, the term:

(i) "Qualified water conservation facility" means any facility, including buildings, and any machinery and equipment used in the water conservation process resulting in a minimum 10 percent reduction in permit by relinquishment or transfer of annual permitted water usage from existing permitted ground-water sources. In addition, such facility shall have been certified pursuant to rules and regulations promulgated by the Department of Natural Resources as necessary to promote its ground-water management efforts for areas with a multiyear record of consumption at, near, or above sustainable use signaled by declines in ground-water pressure, threats of salt-water intrusion, need to develop alternate sources to accommodate economic growth and development, or any other indication of growing inadequacy of the existing resource.

(ii) "Water conservation" means a minimum 10 percent reduction resulting in the relinquishment of transfer of annual permitted water usage from existing ground-water sources due to

increased manufacturing process efficiencies or recycling of manufacturing process water which results in reduced ground-water usage, or a change from a ground-water source to a surface-water source or an alternate source.

(C) Any person making a sale of machinery and equipment for the purposes specified in this paragraph shall collect the tax imposed on this sale unless the purchaser furnishes such person with a certificate issued by the commissioner certifying that the purchaser is entitled to purchase the machinery and equipment without paying the tax;

(37) Reserved;

(38) Sales of tangible personal property and fees and charges for services by the Rock Eagle 4-H Center;

(39) Sales by any public or private school containing any combination of grades kindergarten through 12 of tangible personal property, concessions, or tickets for admission to a school event or function, provided that the net proceeds from such sales are used solely for the benefit of such public or private school or its students;

(39.1) The use of cargo containers and their related chassis which are owned by or leased to persons engaged in the international shipment of cargo by ocean-going vessels which containers and chassis are directly used for the storage and shipment of tangible personal property in or through this state in intrastate or interstate commerce;

(40) The sale of major components and repair parts installed in military craft, vehicles, and missiles;

(41)(A) Sales of tangible personal property and services to a child-caring institution as defined in paragraph (1) of Code Section 49-5-3, as amended; a child-placing agency as defined in paragraph (2) of Code Section 49-5-3, as amended; or a maternity home as defined in paragraph (14) of Code Section 49-5-3, as amended, when such institution, agency, or home is engaged primarily in providing child services and is a nonprofit, tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code and obtains an exemption determination letter from the commissioner; and

(B) Sales by an institution, agency, or home as described in subparagraph (A) of this paragraph when:

(i) The sale results from a specific charitable fundraising activity;

(ii) The number of days upon which the fundraising activity occurs does not exceed 30 in any calendar year;

(iii) No part of the gross sales or net profits from the sales inures to the benefit of any private person; and

(iv) The gross sales or net profits from the sales are used purely for charitable purposes in providing child services;

(42) The use by, or lease or rental of tangible personal property to, a person who acquires the property from another person where both persons are under 100 percent common ownership and where the person who furnishes, leases, or rents the property has:

(A) Previously paid sales or use tax on the property; or

(B) Been credited under Code Section 48-8-42 with paying a sales or use tax on the property so furnished, leased, or rented, and the tax credited is based upon the fair rental or lease value of the property;

(43) Gross revenues generated from all bona fide coin operated amusement machines which vend or dispense music or are operated for skill, amusement, entertainment, or pleasure which are in commercial use and are provided to the public for play which will require a permit fee under Chapter 27 of Title 50;

(44) Sales of motor vehicles, as defined in Code Section 48-5-440, to nonresident purchasers for immediate transportation to and use in another state in which the vehicles are required to be registered, provided the seller obtains from the purchaser and retains an affidavit stating the name and address of the purchaser, the state in which the vehicle will be registered and operated, the make, model, and serial number of the vehicle, and such other information as the commissioner may require;

(45) The sale, use, storage, or consumption of paper stock which is manufactured in this state into catalogs intended to be delivered outside this state for use outside this state;

(46) Sales to blood banks having a nonprofit status pursuant to Section 501(c)(3) of the Internal Revenue Code;

(47)(A)(i) The sale or use of drugs which are lawfully dispensable only by prescription for the treatment of natural persons, the sale or use of insulin regardless of whether the insulin is dispensable only by prescription, and the sale or use of prescription eyeglasses and contact lenses including, without limitation, prescription contact lenses distributed by the manufacturer to licensed dispensers as free samples not intended for resale and labeled as such; and

(ii) The sale or use of drugs lawfully dispensable by prescription for the treatment of natural persons which are dispensed or

distributed without charge to physicians, dentists, clinics, hospitals, or any other person or entity located in Georgia by a pharmaceutical manufacturer or distributor; and the use of drugs and durable medical equipment lawfully dispensed or distributed without charge solely for the purposes of a clinical trial approved by either the United States Food and Drug Administration or by an institutional review board.

(B) For purposes of this paragraph, the term:

(i) "Drug" means the same as provided in Code Section 48-8-2 but shall not include over-the-counter drugs or tobacco.

(ii) "Institutional review board" means an institutional review board as provided in 21 C.F.R. Section 56.

(C) The commissioner is authorized to prescribe forms and promulgate rules and regulations deemed necessary in order to administer and effectuate this paragraph;

(48) Sales to licensed commercial fishermen of bait for taking crabs and the use by licensed commercial fishermen of bait for taking crabs;

(49) Reserved;

(49.1)(A) From July 1, 2008, until June 30, 2010, the sale or use of liquefied petroleum gas or other fuel used in a structure in which swine are raised.

(B)(i) For the purposes of this paragraph, the term "local sales and use tax" shall mean any sales tax, use tax, or local sales and use tax which is levied and imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to constitutional amendment; by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the "Metropolitan Atlanta Rapid Transit Authority Act of 1965"; by or pursuant to Article 2 of this chapter; by or pursuant to Article 2A of this chapter; by or pursuant to Part 1 of Article 3 of this chapter; by or pursuant to Part 2 of Article 3 of this chapter; and by or pursuant to Article 4 of this chapter.

(ii) The exemption provided for in subparagraph (A) of this paragraph shall not apply to any local sales and use tax levied or imposed at any time;

(50) Sales of insulin syringes and blood glucose level measuring strips dispensed without a prescription;

(51) Sales of oxygen prescribed by a licensed physician;

(52) The sale or use of hearing aids;

(53) Sales transactions for which food stamps or WIC coupons are used as the medium of exchange;

(54) The sale or use of any durable medical equipment that is sold or used pursuant to a prescription or prosthetic device that is sold or used pursuant to a prescription;

(55) The sale of lottery tickets authorized by Chapter 27 of Title 50;

(56) Sales by any parent-teacher organization qualified as a tax exempt organization under Section 501(c)(3) of the Internal Revenue Code;

(57)(A) The sale of food and food ingredients to an individual consumer for off-premises human consumption, to the extent provided in this paragraph.

(B) For the purposes of this paragraph, the term "food and food ingredients" as defined in Code Section 48-8-2 shall not include prepared food, drugs, or over-the-counter drugs.

(C) The exemption provided for in this paragraph shall not apply to the sale or use of food and food ingredients when purchased for any use in the operation of a business.

(D)(i) The exemption provided for in this paragraph shall not apply to any local sales and use tax levied or imposed at any time.

(ii) For the purposes of this subparagraph, the term "local sales and use tax" shall mean any sales tax, use tax, or local sales and use tax which is levied and imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to constitutional amendment; by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the "Metropolitan Atlanta Rapid Transit Authority Act of 1965"; or by or pursuant to any article of this chapter.

(E) The commissioner shall adopt rules and regulations to carry out the provisions of this paragraph;

(57.1)(A) From July 1, 2014, until June 30, 2016, sales of food and food ingredients to a qualified food bank.

(B) As used in this paragraph, the term "qualified food bank" means any food bank which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and which is operated primarily for the purpose of providing hunger relief to low income persons residing in this state.

(C) The commissioner is authorized to promulgate rules and regulations deemed necessary in order to administer and effectuate this paragraph;

(57.2)(A) For the period commencing July 1, 2015, and ending on June 30, 2020, the use of food and food ingredients which is donated to a qualified nonprofit agency and which is used for hunger relief purposes.

(B) As used in this paragraph, the term "qualified nonprofit agency" means any entity which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and which provides hunger relief.

(C) For the purposes of this paragraph, the term "food and food ingredients" as defined in Code Section 48-8-2 shall not include drugs or over-the-counter drugs.

(D) The commissioner is authorized to promulgate rules and regulations deemed necessary in order to administer and effectuate this paragraph;

(57.3)(A) For the period commencing July 1, 2015, and ending on June 30, 2020, the use of food and food ingredients which is donated following a natural disaster and which is used for disaster relief purposes.

(B) For the purposes of this paragraph, the term "food and food ingredients" as defined in Code Section 48-8-2 shall not include drugs or over-the-counter drugs.

(C) The commissioner is authorized to promulgate rules and regulations deemed necessary in order to administer and effectuate this paragraph;

(58) Reserved;

(59)(A) Sales of food and food ingredients to and by member councils of the Girl Scouts of the U.S.A. in connection with fundraising activities of any such council.

(B) Sales of food and food ingredients to and by member councils of the Boy Scouts of America in connection with fundraising activities of any such council;

(60) The sale of machinery and equipment which is incorporated into any telecommunications manufacturing facility and used for the primary purpose of improving air quality in advanced technology clean rooms of Class 100,000 or less, provided such clean rooms are used directly in the manufacture of tangible personal property;

(61) Printed advertising inserts or advertising supplements distributed in this state in or as part of any newspaper for resale;

(62) The sale of grass sod of all kinds and character when such sod is in the original state of production or condition of preparation for sale. The exemption provided for by this paragraph shall only apply to a sale made by the sod producer, a member of such producer's family, or an employee of such producer. The exemption provided for by this paragraph shall not apply to sales of grass sod by a person engaged in the business of selling plants, seedlings, nursery stock, or floral products;

(63) The sale or use of funeral merchandise, outer burial containers, and cemetery markers as defined in Code Section 43-18-1, which are purchased with funds received from the Georgia Crime Victims Emergency Fund under Chapter 15 of Title 17;

(64) Reserved;

(65)(A) Sales of dyed diesel fuel exclusively used to operate vessels or boats in the commercial fishing trade by licensed commercial fishermen.

(B) Any person making a sale of dyed diesel fuel for the purposes specified in this paragraph shall collect the tax imposed on the sale by this article unless the purchaser furnishes such person with a certificate issued by the commissioner certifying that the purchaser is entitled to purchase the dyed diesel fuel without paying the tax;

(66) Sales of gold, silver, or platinum bullion or any combination of such bullion, provided that the dealer maintains proper documentation, as specified by rule or regulation to be promulgated by the department, to identify each sale or portion of a sale which is exempt under this paragraph;

(67) Sales of coins or currency or a combination of coins and currency, provided that the dealer maintains proper documentation, as specified by rule or regulation to be promulgated by the department, to identify each sale or portion of a sale which is exempt under this paragraph;

(68)(A) The sale or lease of computer equipment to be incorporated into a facility or facilities in this state to any high-technology company classified under North American Industrial Classification System code 51121, 51331, 51333, 51334, 51421, 52232, 54133, 54171, 54172, 334413, 334611, 513321, 513322, 514191, 541511, 541512, 541513, or 541519 where such sale of computer equipment for any calendar year exceeds $15 million or, in the event of a lease of such computer equipment, the fair market value of such leased computer equipment for any calendar year exceeds $15 million.

(B) Any person making a sale or lease of computer equipment to a high-technology company as specified in subparagraph (A) of this

paragraph shall collect the tax imposed on the sale by this article unless the purchaser furnishes such seller with a certificate issued by the commissioner certifying that the purchaser is entitled to purchase the computer equipment without paying the tax. As a condition precedent to the issuance of the certificate, the commissioner, at such commissioner's discretion, may require a good and valid bond with a surety company authorized to do business in this state as surety or may require legal securities, in an amount fixed by the commissioner, conditioned upon payment by the purchaser of all taxes due under this article in the event it should be determined that the sale fails to meet the requirements of this subparagraph.

(C)(i) As used in this paragraph, the term "computer equipment" means any individual computer or organized assembly of hardware or software, such as a server farm, mainframe or midrange computer, mainframe driven high-speed print and mailing devices, and workstations connected to those devices via high bandwidth connectivity such as a local area network, wide area network, or any other data transport technology which performs one of the following functions: storage or management of production data, hosting of production applications, hosting of application systems development activities, or hosting of applications systems testing.

(ii) The term shall not include:

(I) Telephone central office equipment or other voice data transport technology; or

(II) Equipment with imbedded computer hardware or software which is primarily used for training, product testing, or in a manufacturing process.

(D) Any corporation, partnership, limited liability company, or any other similar entity which qualifies for the exemption and is affiliated in any manner with a nonqualified corporation, partnership, limited liability company, or any other similar entity must conduct at least a majority of its business with entities with which it has no affiliation;

(69) The sale of machinery, equipment, and materials incorporated into and used in the construction or operation of a clean room of Class 100 or less in this state, not to include the building or any permanent, nonremovable component of the building that houses such clean room, provided that such clean room is used directly in the manufacture of tangible personal property in this state;

(70)(A) For the purposes of this paragraph, the term "local sales and use tax" shall mean any sales tax, use tax, or local sales and

use tax which is levied and imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to constitutional amendment; by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the "Metropolitan Atlanta Rapid Transit Authority Act of 1965"; by or pursuant to Article 2 of this chapter; by or pursuant to Article 2A of this chapter; by or pursuant to Part 1 of Article 3 of this chapter; or by or pursuant to Part 2 of Article 3 of this chapter.

(B) The sale of natural or artificial gas used directly in the production of electricity which is subsequently sold.

(C) The exemption provided for in subparagraph (B) of this paragraph shall not apply to any local sales and use tax levied or imposed at any time.

(D) The commissioner shall adopt rules and regulations to carry out the provisions of this paragraph;

(70.1)(A) For the period commencing July 1, 2008, and concluding on December 31, 2010, the sale of natural or artificial gas, No. 2 fuel oil, No. 6 fuel oil, propane, petroleum coke, and coal used directly or indirectly in the manufacture or processing, in a manufacturing plant located in this state, of tangible personal property primarily for resale, and the fuel cost recovery component of retail electric rates used directly or indirectly in the manufacture or processing, in a manufacturing plant located in this state, of tangible personal property primarily for resale.

(B) The exemption provided for in subparagraph (A) of this paragraph shall not apply to the first $7.60 per decatherm of the sales price or cost price of natural or artificial gas, the first $2.48 per gallon of the sales price or cost price of No. 2 fuel oil, the first $1.72 per gallon of the sales price or cost price of No. 6 fuel oil, the first $1.44 per gallon of the sales price or cost price of propane, the first $57.90 per ton of petroleum coke, the first $57.90 per ton of coal, or the first 3.44¢ per kilowatt hour of the fuel cost recovery component of retail electricity rates whether such fuel recovery charges are charged separately or are embedded in such electric rates. Dealers with such embedded rates may exempt from the electricity sales upon which the sales tax is calculated no more than the amount, if any, by which the fuel cost recovery charge approved by the Georgia Public Service Commission for transmission customers of electric utilities regulated by the Georgia Public Service Commission exceeds 3.44¢ per kilowatt hour.

(C)(i) For the purposes of this paragraph, the term "local sales and use tax" shall mean any sales tax, use tax, or local sales and

use tax which is levied and imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to constitutional amendment; by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the "Metropolitan Atlanta Rapid Transit Authority Act of 1965"; or by or pursuant to Article 2, 2A, 3, or 4 of this chapter.

(ii) The exemption provided for in subparagraph (A) of this paragraph shall not apply to any local sales and use tax levied or imposed at any time.

(D) Any person making a sale of items qualifying for exemption under subparagraph (A) of this paragraph shall be relieved of the burden of proving such qualification if the person receives in good faith a certificate from the purchaser certifying that the purchase is exempt under this paragraph.

(E) Any person who qualifies for this exemption shall notify and certify to the person making the qualified sale that this exemption is applicable to the sale;

(71) Sales to or by any nonprofit organization which has as its primary purpose the raising of funds for books, materials, and programs for public libraries if such organization qualifies as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code;

(72) The sale or use of all mobility enhancing equipment prescribed by a physician;

(73) Reserved;

(74)(A)(i) Except as otherwise provided in divisions (ii) and (iii) of this subparagraph, the sale or use of digital broadcast equipment sold to, leased to, or used by a federally licensed commercial or public radio or television broadcast station, a cable network, or a cable distributor that enables a radio or television station, cable network, or cable distributor to originate and broadcast or transmit or to receive and broadcast or transmit digital signals, including, but not limited to, digital broadcast equipment required by the Federal Communications Commission.

(ii) For commercial or public television broadcasters and cable distributors, such equipment shall be limited to antennas, transmission lines, towers, digital transmitters, studio to transmitter links, digital routing switchers, character generators, Advanced Television Systems Committee video encoders and multiplexers, monitoring facilities, cameras, terminal equipment, tape recorders, and file servers.

(iii) For radio broadcasters, such equipment shall be limited to transmitters, digital audio processors, and diskettes.

(B) As used in this paragraph, the term:

(i) "Digital broadcast equipment" means equipment purchased, leased, or used for the origination or integration of program materials for broadcast over the airwaves or transmission by cable, satellite, or fiber optic line which uses or produces an electronic signal where the signal carries data generated, stored, and processed as strings of binary data. Data transmitted or stored as digital data consists of strings of positive or nonpositive elements of a transmission expressed in strings of 0's and 1's which a computer or processor can reconstruct as an electronic signal.

(ii) "Federally licensed commercial or public radio or television broadcast station" means any entity or enterprise, either commercial or noncommercial, which operates under a license granted by the Federal Communications Commission for the purpose of free distribution of audio and video services when the distribution occurs by means of transmission over the public airwaves.

(C) The exemption provided under this paragraph shall not apply to any of the following:

(i) Repair or replacement parts purchased for the equipment described in this paragraph;

(ii) Equipment purchased to replace equipment for which an exemption was previously claimed and taken under this paragraph;

(iii) Any equipment purchased after a television station, cable network, or cable distributor has ceased analog broadcasting, or purchased after November 1, 2004, whichever occurs first; or

(iv) Any equipment purchased after a radio station has ceased analog broadcasting, or purchased after November 1, 2008, whichever occurs first.

(D) Any person making a sale of digital broadcasting equipment to a federally licensed commercial or public radio or television broadcast station, cable network, or cable distributor shall collect the tax imposed on the sale by this article unless the purchaser furnishes a certificate issued by the commissioner certifying that the purchaser is entitled to purchase the equipment without paying the tax;

(75)(A) The sale of eligible property. The exemption provided by this paragraph applies only to sales occurring during periods:

(i) Commencing at 12:01 A.M. on August 1, 2014, and concluding at 12:00 Midnight on August 2, 2014; and

(ii) Commencing at 12:01 A.M. on July 31, 2015, and concluding at 12:00 Midnight on August 1, 2015.

(B) As used in this paragraph, the term:

(i) "Clothing" means all human wearing apparel suitable for general use and includes footwear. The term "clothing" excludes belt buckles sold separately; costume masks sold separately; patches and emblems sold separately; sewing equipment and supplies, including but not limited to knitting needles, patterns, pins, scissors, sewing machines, sewing needles, tape measures, and thimbles; sewing materials that become part of clothing, including but not limited to buttons, fabric, lace, thread, yarn, and zippers; and clothing accessories or equipment.

(ii) "Clothing accessories or equipment" means incidental items worn on the person or in conjunction with clothing.

(iii) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions. The term "computer" excludes cellular phones.

(iv) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

(v) "Eligible property" means:

(I) Articles of clothing with a sales price of $100.00 or less per item;

(II) Computers, computer components, and prewritten computer software purchased for noncommercial home or personal use with a sales price of $1,000.00 or less per item; and

(III) School supplies, school art supplies, school computer supplies, and school instructional materials purchased for noncommercial use with a sales price of $20.00 or less per item.

(vi) "Prewritten computer software" means computer software, including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be other than prewritten computer software. Prewritten computer software includes software designed and developed by the author or other creator to the

specifications of a specific purchaser when it is sold to a person other than the specific purchaser. Where a person modifies or enhances computer software of which the person is not the author or creator, the person shall be deemed to be the author or creator only of such person's modifications or enhancements. Prewritten computer software or a prewritten portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software; provided, however, that where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute prewritten computer software.

(vii) "School art supply" means an item commonly used by a student in a course of study for artwork.

(viii) "School computer supply" means an item commonly used by a student in a course of study in which a computer is used.

(ix) "School instructional material" means written material commonly used by a student in a course of study as a reference and to learn the subject being taught.

(x) "School supply" means an item commonly used by a student in a course of study.

(C) The commissioner shall promulgate any rules and regulations necessary to implement and administer this paragraph including but not be limited to a list of those articles and items qualifying for the exemption pursuant to this paragraph;

(76)(A) The sale or use of tangible personal property used for or in the renovation or expansion of an aquarium located in this state that charges for admission and that is owned or operated by an organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, to the extent provided in subparagraphs (B) and (C) of this paragraph.

(B) This exemption shall apply from July 1, 2015, until January 1, 2017, or until the aggregate state sales and use tax refunded pursuant to this paragraph exceeds $750,000.00, whichever occurs first. A qualifying aquarium must pay sales and use tax on all purchases and uses of tangible personal property and may obtain the benefit of this exemption from state sales and use tax by filing a claim for refund of tax paid on qualifying items. All refunds made pursuant to this paragraph will not include interest.

(C) This exemption shall apply from July 1, 2015, until January 1, 2017, to any local sales and use tax levied or imposed at any time

in any area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the "Metropolitan Atlanta Rapid Transit Authority Act of 1965," or such taxes as authorized by or pursuant to Article 2, 2A, 3, 4, or 5 of this chapter.

(D) Notwithstanding any provision of Code Section 48-8-63 to the contrary, purchases by a contractor may qualify for the exemption provided for in this paragraph. However, when a contractor purchases qualifying tangible personal property, the contractor shall pay the tax at the time of purchase or at the time of first use in this state; and the ultimate owner of the property may file a claim for refund of the tax paid on the qualifying property.

(E) Items qualifying for exemption include all tangible personal property that will remain at the aquarium facility after completion of construction and all tangible personal property that becomes incorporated into the real property structures of the aquarium facility. The exemption excludes all items that remain tangible personal property in the possession of a contractor after the completion of construction;

(77) Reserved;

(78)(A) Notwithstanding any provision of Code Section 48-8-63 to the contrary, from May 5, 2004, until September 1, 2011, sales of tangible personal property used in direct connection with the construction of a new symphony hall facility owned or operated by an organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code if the aggregate construction cost of such facility is $200 million or more.

(B) Any person making a sale of tangible personal property for the purpose specified in this paragraph shall collect the tax imposed on this sale unless the purchaser furnishes such person with an exemption determination letter issued by the commissioner certifying that the purchaser is entitled to purchase the tangible personal property without paying the tax;

(79) Reserved;

(80)(A) Notwithstanding any provision of Code Section 48-8-63 to the contrary, from May 17, 2004, until December 31, 2007, sales of tangible personal property to, or used in or for the new construction of an eligible corporate attraction.

(B) As used in this paragraph, the term "corporate attraction" means any tourist attraction facility constructed on or after May 17, 2004, dedicated to the history and products of a corporation

which costs exceeds $50 million, is greater than 60,000 square feet of space, and has associated facilities, including but not limited to parking decks and landscaping owned by the same owner as the eligible corporate attraction.

(C) Any person making a sale of tangible personal property for the purpose specified in this paragraph shall collect the tax imposed on this sale unless the purchaser furnishes such person with an exemption determination letter issued by the commissioner certifying that the purchaser is entitled to purchase the tangible personal property without paying the tax;

(81) The sale of food and food ingredients to a qualifying airline for service to passengers and crew in the aircraft, whether in flight or on the ground, and the furnishing without charge of food and food ingredients to qualifying airline passengers and crew in the aircraft, whether in flight or on the ground; and for purposes of this paragraph a "qualifying airline" shall mean any person which is authorized by the Federal Aviation Administration or appropriate agency of the United States to operate as an air carrier under an air carrier operating certificate and which provides regularly scheduled flights for the transportation of passengers or cargo for hire. As used in this paragraph, "food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. Food and food ingredients shall not include alcoholic beverages or tobacco;

(82)(A) Purchase of Energy Star Qualified Products or WaterSense Products with a sales price of $1,500.00 or less per product purchased for noncommercial home or personal use. The exemption provided by this paragraph shall apply only to sales:

(i) Commencing at 12:01 A.M. on October 3, 2014, and concluding at 12:00 Midnight on October 5, 2014; and

(ii) Commencing at 12:01 A.M. on October 2, 2015, and concluding at 12:00 Midnight on October 4, 2015.

(B) As used in this paragraph, the term:

(i) "Energy Star Qualified Product" means any dishwasher, clothes washer, air conditioner, ceiling fan, fluorescent light bulb, dehumidifier, programmable thermostat, refrigerator, door, or window that meets the energy efficient guidelines set by the United States Environmental Protection Agency and the United States Department of Energy and is authorized to carry the Energy Star label.

(ii) "WaterSense Product" means a product authorized to bear the United States Environmental Protection Agency WaterSense label.

(C) The exemption provided for in subparagraph (A) of this paragraph shall not apply to purchases of Energy Star Qualified Products or WaterSense Products purchased for trade, business, or resale.

(D) The commissioner shall promulgate any rules and regulations necessary to implement and administer this paragraph;

(83)(A) The sale or use of biomass material, including pellets or other fuels derived from compressed, chipped, or shredded biomass material, utilized in the production of energy, including without limitation the production of electricity, steam, or the production of electricity and steam, which is subsequently sold.

(B) As used in this paragraph, the term "biomass material" means organic matter, excluding fossil fuels, including agricultural crops, plants, trees, wood, wood wastes and residues, sawmill waste, sawdust, wood chips, bark chips, and forest thinning, harvesting, or clearing residues; wood waste from pallets or other wood demolition debris; peanut shells; pecan shells; cotton plants; corn stalks; and plant matter, including aquatic plants, grasses, stalks, vegetation, and residues, including hulls, shells, or cellulose containing fibers;

(84)(A) Notwithstanding any provision of Code Section 48-8-63 to the contrary, from July 1, 2006, until June 30, 2008, sales of tangible personal property used in direct connection with the construction of a national infantry museum and heritage park facility.

(B) As used in this paragraph, the term "national infantry museum and heritage park facility" means a museum and park facility which is constructed after July 1, 2006; is dedicated to the history of the American foot soldier; has more than 130,000 square feet of space; and has associated facilities, including, but not limited to, parking, parade grounds, and memorial areas.

(C) Any person making a sale of tangible personal property for the purpose specified in this paragraph shall collect the tax imposed on this sale unless the purchaser furnishes such person with an exemption determination letter issued by the commissioner certifying that the purchaser is entitled to purchase the tangible personal property without paying the tax;

(85) Reserved;

(86) The sale or use of engines, parts, equipment, and other tangible personal property used in the maintenance or repair of aircraft when such engines, parts, equipment, and other tangible personal property are installed on such aircraft that is being repaired or maintained in this state, so long as such aircraft is not registered in this state;

(87)(A) The sale or use of tangible personal property used for or in the renovation or expansion of a zoological institution to the extent provided in subparagraphs (B) and (C) of this paragraph. As used in this paragraph, the term "zoological institution" means a non-profit wildlife park, terrestrial institution, or facility which:

(i) Is open to the public, charges for admission, exhibits and cares for a collection consisting primarily of animals other than fish, and has received accreditation from the Association of Zoos and Aquariums; and

(ii) Is located in this state and owned or operated by an organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

(B) This exemption shall apply from July 1, 2016, until June 30, 2018, or until the aggregate state sales and use tax refunded pursuant to this paragraph exceeds $350,000.00, whichever occurs first. A qualifying zoological institution shall pay sales and use tax on all purchases and uses of tangible personal property and may obtain the benefit of this exemption from state sales and use tax by filing a claim for refund of tax paid on qualifying items. All refunds made pursuant to this paragraph shall not include interest.

(C)(i) This exemption shall apply from July 1, 2016, until June 30, 2018. A qualifying zoological institution shall pay sales and use tax on all purchases and uses of tangible personal property and may obtain the benefit of this exemption from local sales and use tax by filing a claim for refund of tax paid on qualifying items. All refunds made pursuant to this paragraph shall not include interest.

(ii) For purposes of this subparagraph, local sales and use tax shall be defined as any local sales and use tax levied or imposed at any time in any area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the "Metropolitan Atlanta Rapid Transit Authority Act of 1965," or such taxes as authorized by or pursuant to Article 2, 2A, 3, 4, or 5 of this chapter.

(D) Notwithstanding any provision of Code Section 48-8-63 to the contrary, purchases by a contractor may qualify for the exemp-

tion provided for in this paragraph. However, when a contractor purchases qualifying tangible personal property, the contractor shall pay the tax at the time of purchase or at the time of first use in this state; and the ultimate owner of the property may file a claim for refund of the tax paid on the qualifying property.

(E) Items qualifying for exemption include all tangible personal property that will remain at the zoological institution after completion of construction and all tangible personal property that becomes incorporated into the real property structures of the zoological institution. This exemption excludes all items that remain tangible personal property in the possession of a contractor after the completion of construction;

(88)(A) Notwithstanding any provision of Code Section 48-8-63 to the contrary, from July 1, 2009, until July 30, 2015, sales of tangible personal property to, or used in or for the new construction of, a civil rights museum.

(B) As used in this paragraph, the term "civil rights museum" means a museum which is constructed after July 1, 2009; is owned or operated by an organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code; has more than 40,000 square feet of space; and has associated facilities, including, but not limited to, special event space and retail space.

(C) Any person making a sale of tangible personal property for the purpose specified in this paragraph shall collect the tax imposed on this sale unless the purchaser furnishes such person with an exemption determination letter issued by the commissioner certifying that the purchaser is entitled to purchase the tangible personal property without paying the tax.

(D) The exemption provided for under subparagraph (A) of this paragraph shall not apply to sales of tangible personal property that occur after the museum is opened to the public;

(89) For the period commencing on July 1, 2009, and ending on June 30, 2011, the sale or use of an airplane flight simulation training device approved by the Federal Aviation Administration under Appendices A and B, 14 C.F.R. Part 60;

(90) Reserved;

(91) The sale of prewritten software which has been delivered to the purchaser electronically or by means of load and leave;

(92) For the period commencing July 1, 2012, and ending on December 31, 2013, sales to an organization defined by the Internal Revenue Service as an instrumentality of the states relating to the holding of an annual meeting in this state;

(93)(A) For the period commencing January 1, 2012, until June 30, 2016, sales of tangible personal property used for and in the construction of a competitive project of regional significance.

(B) The exemption provided in subparagraph (A) of this paragraph shall apply to purchases made during the entire time of construction of the competitive project of regional significance so long as such project meets the definition of a "competitive project of regional significance" within the period commencing January 1, 2012, until June 30, 2016.

(C) The department shall not be required to pay interest on any refund claims filed for local sales and use taxes paid on purchases made prior to the implementation of this paragraph.

(D) As used in this paragraph, the term "competitive project of regional significance" means the location or expansion of some or all of a business enterprise's operations in this state where the commissioner of economic development determines that the project would have a significant regional impact. The commissioner of economic development shall promulgate regulations in accordance with the provisions of this paragraph outlining the guidelines to be applied in making such determination;

(94) (For effective date, see note.) The sale, use, consumption, or storage of materials, containers, labels, sacks, or bags used for packaging tangible personal property for shipment or sale. To qualify for the packaging exemption, the items shall be used solely for packaging and shall not be purchased for reuse. The packaging exemption shall not include materials purchased at a retail establishment for consumer use;

(95) (For effective date, see note.) The sale or purchase of any motor vehicle titled in this state on or after March 1, 2013, pursuant to Code Section 48-5C-1. Except as otherwise provided in this paragraph, this exemption shall not apply to rentals of motor vehicles for periods of 31 or fewer consecutive days. Lease payments for a motor vehicle that is leased for more than 31 consecutive days for which a state and local title ad valorem tax is paid shall be exempt from sales and use taxes as provided for in this paragraph. No sales and use taxes shall be imposed upon state and local title ad valorem tax fees imposed pursuant to Chapter 5C of this title as a part of the purchase price of a motor vehicle or any portion of a lease or rental payment that is attributable to payment of state and local title ad valorem tax fees under Chapter 5C of this title; or

(96)(A) (For effective date, see note.) The sale or use of construction materials used for or in the construction of buildings at a private college to the extent provided in subparagraphs (B) and (C)

of this paragraph. As used in this paragraph, the term "private college" means a college in this state which is operated by an organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and has an enrollment of between 1,000 and 3,000 students.

(B) This exemption shall apply from July 1, 2015, until June 30, 2016, or until the aggregate state sales and use tax refunded pursuant to this paragraph exceeds $350,000.00, whichever occurs first. A qualifying private college shall pay sales and use tax on all purchases and uses of construction materials and may obtain the benefit of this exemption from state sales and use tax by filing a claim for refund of tax paid on qualifying items. All refunds made pursuant to this paragraph shall not include interest.

(C)(i) This exemption shall apply from July 1, 2015, until June 30, 2016. A qualifying private college shall pay sales and use tax on all purchases and uses of construction materials and may obtain the benefit of this exemption from local sales and use tax by filing a claim for refund of tax paid on qualifying items. All refunds made pursuant to this paragraph shall not include interest.

(ii) For purposes of this subparagraph, local sales and use tax shall be defined as any local sales and use tax levied or imposed at any time in any area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the "Metropolitan Atlanta Rapid Transit Authority Act of 1965," or such taxes as authorized by or pursuant to Article 2, 2A, 3, 4, or 5 of this chapter.

(D) Notwithstanding any provision of Code Section 48-8-63 to the contrary, purchases by a contractor may qualify for the exemption provided for in this paragraph. However, when a contractor purchases qualifying construction materials, the contractor shall pay the tax at the time of purchase or at the time of first use in this state; and the ultimate owner of the property may file a claim for refund of the tax paid on the qualifying property.

(E) Items qualifying for exemption include all construction materials that will remain at the private college after completion of construction and all construction materials that become incorporated into the real property structures of the private college. This exemption excludes all items that remain in the possession of a contractor after the completion of construction. (Ga. L. 1951, p. 360, §§ 3, 22; Ga. L. 1953, Jan.-Feb. Sess., p. 182, §§ 1, 2; Ga. L. 1953,

Jan.-Feb. Sess., p. 191, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 192, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 194, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 199, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 301, § 1; Ga. L. 1960, p. 153, § 2; Ga. L. 1963, p. 13, § 1; Ga. L. 1963, p. 132, § 1; Ga. L. 1963, p. 613, § 1; Ga. L. 1964, p. 57, § 3; Ga. L. 1964, p. 206, § 1; Ga. L. 1964, p. 672, § 1; Ga. L. 1965, p. 13, § 1; Ga. L. 1966, p. 211, § 1; Ga. L. 1966, p. 507, § 1; Ga. L. 1966, p. 537, §§ 1, 2; Ga. L. 1967, p. 282, § 1; Ga. L. 1967, p. 283, § 1; Ga. L. 1967, p. 286, § 1; Ga. L. 1968, p. 129, § 1; Ga. L. 1968, p. 136, § 1; Ga. L. 1968, p. 201, § 1; Ga. L. 1968, p. 545, § 1; Ga. L. 1968, p. 559, § 1; Ga. L. 1970, p. 16, § 1; Ga. L. 1970, p. 252, § 2; Ga. L. 1970, p. 254, § 1; Ga. L. 1970, p. 460, § 1; Ga. L. 1970, p. 631, § 1; Ga. L. 1971, p. 80, § 1; Ga. L. 1971, p. 265, § 1; Ga. L. 1971, p. 474, § 1; Ga. L. 1971, p. 653, § 1; Ga. L. 1972, p. 457, § 1; Ga. L. 1972, p. 504, § 1; Ga. L. 1973, p. 276, § 1; Ga. L. 1976, p. 411, § 1; Ga. L. 1976, p. 672, § 1; Ga. L. 1976, p. 987, § 1; Ga. L. 1977, p. 590, § 1; Code 1933, § 91A-4503, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1978, p. 1160, §§ 1-4; Ga. L. 1978, p. 1634, § 1; Ga. L. 1978, p. 1664, § 2; Ga. L. 1978, p. 1666, § 1; Ga. L. 1979, p. 5, §§ 85-92; Ga. L. 1979, p. 1278, §§ 1, 2; Ga. L. 1980, p. 10, §§ 25, 26; Ga. L. 1980, p. 586, § 1; Ga. L. 1980, p. 805, § 1; Ga. L. 1980, p. 1188, § 1; Ga. L. 1981, p. 1857, § 41; Ga. L. 1984, p. 1466, § 1; Ga. L. 1985, p. 491, § 1; Ga. L. 1985, p. 624, § 1; Ga. L. 1985, p. 625, § 1; Ga. L. 1985, p. 1177, § 1; Ga. L. 1986, p. 10, § 48; Ga. L. 1986, p. 1453, § 1; Ga. L. 1986, p. 1459, § 1; Ga. L. 1986, p. 1464, § 2; Ga. L. 1986, p. 1467, §§ 1, 2; Ga. L. 1986, p. 1584, § 1; Ga. L. 1987, p. 191, § 9; Ga. L. 1989, p. 62, §§ 2, 3; Ga. L. 1989, p. 622, § 1; Ga. L. 1990, p. 45, § 1; Ga. L. 1991, p. 87, § 2; Ga. L. 1992, p. 1276, § 1; Ga. L. 1992, p. 1521, § 2; Ga. L. 1992, p. 3173, § 1; Ga. L. 1994, p. 132, § 1; Ga. L. 1994, p. 552, § 1; Ga. L. 1994, p. 928, §§ 5, 6; Ga. L. 1994, p. 1269, § 1; Ga. L. 1995, p. 364, § 1; Ga. L. 1995, p. 585, § 8; Ga. L. 1995, p. 991, § 1; Ga. L. 1995, p. 1302, §§ 13, 14; Ga. L. 1996, p. 1, § 1; Ga. L. 1996, p. 220, §§ 8-10; Ga. L. 1996, p. 738, § 1; Ga. L. 1996, p. 1025, § 2; Ga. L. 1996, p. 1643, §§ 1-3; Ga. L. 1997, p. 157, § 1; Ga. L. 1997, p. 1295, § 1; Ga. L. 1997, p. 1412, §§ 1, 2; Ga. L. 1998, p. 128, § 48; Ga. L. 1998, p. 602, §§ 1-3; Ga. L. 1999, p. 634, §§ 1, 2; Ga. L. 2000, p. 409, § 1; Ga. L. 2000, p. 411, § 1; Ga. L. 2000, p. 414, § 1; Ga. L. 2000, p. 415, § 1; Ga. L. 2000, p. 468, § 1; Ga. L. 2000, p. 485, § 1; Ga. L. 2000, p. 615, §§ 1-3; Ga. L. 2000, p. 1202, §§ 1, 2; Ga. L. 2001, p. 4, § 48; Ga. L. 2001, p. 202, §§ 1, 2; Ga. L. 2001, p. 984, §§ 13-16; Ga. L. 2001, p. 1049, § 1; Ga. L. 2001, p. 1068, § 1; Ga. L. 2002, p. 6, § 1; Ga. L. 2002, p. 415, § 48; Ga. L. 2002, p. 575, § 1; Ga. L. 2002, p. 804, § 1; Ga. L. 2002, p. 855, § 1; Ga. L. 2002, p. 954, § 3; Ga. L. 2002, p. 984, § 1; Ga. L. 2003, p. 337, § 1; Ga. L. 2003, p. 665, §§ 11, 12; Ga. L. 2004, p. 154, § 1; Ga. L. 2004, p. 328, § 1; Ga. L. 2004, p. 403, § 1; Ga. L. 2004, p. 628,

§ 1; Ga. L. 2004, p. 690, § 22; Ga. L. 2004, p. 947, § 1; Ga. L. 2004, p. 1073, § 1; Ga. L. 2005, p. 60, § 48/HB 95; Ga. L. 2005, p. 142, §§ 1, 2/HB 487; Ga. L. 2005, p. 334, § 29-6/HB 501; Ga. L. 2005, p. 725, §§ 1, 2, 3, 4/HB 341; Ga. L. 2005, p. 794, § 1/HB 559; Ga. L. 2005, p. 983, § 1/HB 5; Ga. L. 2006, p. 222, § 1/HB 1014; Ga. L. 2006, p. 263, § 1/HB 1018; Ga. L. 2006, p. 419, § 1/HB 834; Ga. L. 2006, p. 471, § 1/HB 1301; Ga. L. 2006, p. 524, §§ 1, 2/HB 1219; Ga. L. 2006, p. 527, § 1/HB 1121; Ga. L. 2006, p. 538, § 1/HB 841; Ga. L. 2007, p. 47, § 48/SB 103; Ga. L. 2007, p. 207, §§ 1, 2/HB 128; Ga. L. 2007, p. 419, § 1/HB 186; Ga. L. 2007, p. 594, § 1/HB 169; Ga. L. 2007, p. 604, § 1/HB 282; Ga. L. 2007, p. 709, § 1/HB 193; Ga. L. 2008, p. 316, § 1/HB 1178; Ga. L. 2008, p. 340, §§ 1, 2/HB 948; Ga. L. 2008, p. 644, § 3-1/SB 342; Ga. L. 2008, p. 739, §§ 1, 2, 3/HB 957; Ga. L. 2008, p. 773, § 1/HB 1078; Ga. L. 2008, p. 1148, § 1/HB 1023; Ga. L. 2008, p. 1151, § 1/HB 1110; Ga. L. 2008, p. 1160, § 1/HB 237; Ga. L. 2008, p. 1163, § 1/HB 272; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2009, p. 79, § 2/HB 59; Ga. L. 2009, p. 636, § 1/HB 116; Ga. L. 2009, p. 637, §§ 1, 2/HB 120; Ga. L. 2009, p. 642, § 1/HB 212; Ga. L. 2009, p. 650, § 1/HB 358; Ga. L. 2009, p. 651, § 1/HB 395; Ga. L. 2009, p. 777, § 1/HB 129; Ga. L. 2009, p. 794, § 1/HB 349; Ga. L. 2009, p. 795, § 1/HB 364; Ga. L. 2010, p. 662, § 2/HB 1221; Ga. L. 2011, p. 38, § 4/HB 168; Ga. L. 2011, p. 47, § 1/HB 322; Ga. L. 2011, p. 302, § 1/HB 234; Ga. L. 2012, p. 257, §§ 1-5, 4-1, 5-1, 5-5, 5-6, 6-2/HB 386; Ga. L. 2012, p. 580, § 18/HB 865; Ga. L. 2012, p. 694, § 4/HB 729; Ga. L. 2012, p. 775, § 48/HB 942; Ga. L. 2012, p. 1348, § 2/HB 743; Ga. L. 2013, p. 7, § 4/HB 266; Ga. L. 2013, p. 37, § 2-2/HB 487; Ga. L. 2013, p. 141, § 48/HB 79; Ga. L. 2013, p. 190, § 1/HB 164; Ga. L. 2013, p. 243, § 6.1/HB 318; Ga. L. 2014, p. 51, § 2/HB 958; Ga. L. 2014, p. 633, § 1/HB 933; Ga. L. 2014, p. 866, § 48/SB 340; Ga. L. 2015, p. 236, § 5-3/HB 170; Ga. L. 2015, p. 284, § 1/HB 428; Ga. L. 2015, p. 385, § 4-17/HB 252; Ga. L. 2015, p. 1219, § 26/HB 202; Ga. L. 2015, p. 1262, § 7/HB 225; Ga. L. 2015, p. 1313, §§ 1, 1A/HB 426.)

Delayed effective date. — Paragraphs (94) through (96), as set out above, become effective January 1, 2016. For versions of paragraphs (94) through (96) in effect until January 1, 2016, see the 2015 amendment note.

Paragraph (25), as set out above, becomes effective July 1, 2016. For version of paragraph (25) in effect until July 1, 2016, see the 2015 amendment note.

The 2014 amendments. — The first 2014 amendment, effective April 14, 2014, in subparagraph (57.1)(A), substituted "2014" for "2006" and substituted "2016" for "2010"; in subparagraph (75)(A), in the introductory paragraph, substituted "eligible property" for "any covered item" in the first sentence and substituted "applies" for "shall apply" in the second sentence, in division (75)(A)(i), substituted "August 1, 2014" for "August 10, 2012" and substituted "August 2, 2014" for "August 11, 2012", and, in division (75)(A)(ii), substituted "July 31, 2015" for "August 9, 2013" and substituted "August 1, 2015" for "August 10, 2013"; rewrote subparagraph (75)(B); deleted former subparagraph (75)(C), which read: "The exemption provided by this paragraph shall not apply to rentals, sales in a theme park, entertain-

ment complex, public lodging establishment, restaurant, or airport or to purchases for trade, business, or resale."; redesignated former subparagraph (75)(D) as present subparagraph (75)(C); in subparagraph (82)(A), substituted the present provisions of the introductory paragraph for the former provisions, which read: "Purchase of energy efficient products or water efficient products with a sales price of $1,500.00 or less per product purchased for noncommercial home or personal use. The exemption provided by this paragraph shall apply only to sales occurring during periods:", in division (82)(A)(i), substituted "October 3, 2014" for "October 5, 2012" and substituted "October 5, 2014" for "October 7, 2012", and, in division (82)(A)(ii), substituted "October 2, 2015" for "October 4, 2013" and substituted "October 4, 2015" for "October 6, 2013"; rewrote subparagraph (82)(B); in subparagraph (82)(C), substituted "Energy Star Qualified Products" for "energy efficient products" and substituted "WaterSense Products" for "water efficient products"; and substituted "2016" for "2014" in subparagraphs (93)(A) and (93)(B). The second 2014 amendment, effective July 1, 2014, substituted "The" for "For the period commencing on July 1, 2007, and ending on June 30, 2015, the" at the beginning of paragraph (86); and substituted "40,000 square feet" for "70,000 square feet" in subparagraph (88)(B). The third 2014 amendment, effective April 29, 2014, part of an Act to revise, modernize, and correct the Code, revised punctuation in paragraphs (80) and (81).

The 2015 amendments. — The first 2015 amendment, effective July 1, 2015, rewrote subparagraph (33.1)(B); inserted "not to exceed the rate at which such taxes were levied as of January 1, 2014," in the middle of subparagraph (33.1)(D); deleted "of division (ii)" preceding "of subparagraph (B)" near the beginning of subparagraphs (33.1)(E) and (33.1)(F); added subparagraph (33.1)(G); and redesignated former subparagraph (33.1)(G) as present subparagraph (33.1)(H). See editor's note for applicability. The second 2015 amendment, effective July 1, 2015, rewrote paragraphs (76) and (87). The third 2015 amendment, effective July 1, 2015, substituted "intellectually disabled," for "mentally retarded" in paragraph (7.1). The fourth 2015 amendment, effective January 1, 2016, deleted "or" at the end of paragraph (94); substituted "; or" for a period at the end of paragraph (95); and added paragraph (96). The fifth 2015 amendment, effective July 1, 2016, substituted the present provisions of paragraph (25) for the former provisions which read "Reserved". The sixth 2015 amendment, effective July 1, 2015, in paragraph (7.05), substituted "July 1, 2015, and ending on June 30, 2018" for "July 1, 2008, and ending on June 30, 2010" near the beginning of subparagraph (7.05)(A) and added subparagraph (7.05)(C); in subparagraph (7.3), designated the existing provisions as subparagraph (7.3)(A), in paragraph (7.3)(A), substituted "July 1, 2015, and ending June 30, 2018" for "July 1, 2008, and ending June 30, 2010" at the beginning and substituted a period for a semicolon, and added subparagraph (7.3)(B); substituted "July 1, 2015, and ending on June 30, 2020, the use of food and food ingredients" for "July 1, 2007, and ending on June 30, 2011, the use of prepared food" in subparagraphs (57.2)(A) and (57.3)(A); in paragraph (57.2), added subparagraph (57.2)(C), and redesignated former subparagraph (57.2)(C) as present subparagraph (57.2)(D); and, in subparagraph (57.3), added subparagraph (57.3)(B) and redesignated former subparagraph (57.3)(B) as present subparagraph (57.3)(C).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2015, a comma was deleted following "intellectually disabled" in paragraph (7.1).

Editor's notes. — Ga. L. 2013, p. 37, § 3-1/HB 487, not codified by the General Assembly, provides, in part, that: "(b) If any section of this Act is determined to be unconstitutional by a final decision of an appellate court of competent jurisdiction or by the trial court of competent jurisdiction if no appeal is made, with the exception of subsection (g) of Code Section 50-27-78 and Section 2-1 of this Act, this Act shall stand repealed by operation of law.

"(c) This Act is not intended to and shall not be construed to affect the legality

of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be made illegal by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall remain prohibited." As of July 1, 2015, no such finding has been issued.

Ga. L. 2015, p. 236, § 8-1/HB 170, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Transportation Funding Act of 2015.'"

Ga. L. 2015, p. 236, § 8-2/HB 170, not codified by the General Assembly, provides that: "It is the intention of the General Assembly, subject to appropriations and other constitutional obligations of this state, that year to year revenue increases be prioritized to fund education, transportation, and health care in this state."

Ga. L. 2015, p. 236, § 9-1(b)/HB 170, not codified by the General Assembly, provides that: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of this Act." This Act became effective July 1, 2015.

Ga. L. 2015, p. 385, § 1-1/HB 252, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'J. Calvin Hill, Jr., Act.'"

48-8-3.1. Exemptions as to motor fuels.

(a) Except as provided in subsection (b) of this Code section, sales of motor fuels as defined in paragraph (9) of Code Section 48-9-2 shall be exempt from the state sales and use taxes levied or imposed by this article.

(b) Sales of motor fuel, other than gasoline, purchased for purposes other than propelling motor vehicles on public highways as defined in Article 1 of Chapter 9 of this title shall be fully subject to the state sales and use taxes levied or imposed by this article unless otherwise specifically exempted by this article.

(c) It is specifically declared to be the intent of the General Assembly that taxation imposed on sales of motor fuel wholly or partially subject to taxation under this Code section shall not constitute motor fuel taxes for purposes of any provision of the Constitution providing for the automatic or mandatory appropriation of any amount of funds equal to funds derived from motor fuel taxes. (Code 1981, § 48-8-3.1, enacted by Ga. L. 1989, p. 62, § 4; Ga. L. 2015, p. 236, § 5-4/HB 170.)

The 2015 amendment, effective July 1, 2015, in subsection (a), substituted "state sales" for "first 3 percent of the sales" near the end and deleted "and shall be subject to the remaining 1 percent of the sales and use taxes levied or imposed by this article" following "this article" at the end; and, in subsection (b), substituted "fuel, other than gasoline," for "fuel other than gasoline which motor fuel other than gasoline is" near the beginning and substituted "state sales" for "4 percent sales" near the end. See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 236, § 8-1/HB 170, not codified by the General

Assembly, provides that: "This Act shall be known and may be cited as the 'Transportation Funding Act of 2015.'"

Ga. L. 2015, p. 236, § 8-2/HB 170, not codified by the General Assembly, provides that: "It is the intention of the General Assembly, subject to appropriations and other constitutional obligations of this state, that year to year revenue increases be prioritized to fund education, transportation, and health care in this state."

Ga. L. 2015, p. 236, § 9-1(b)/HB 170, not codified by the General Assembly, provides that: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of this Act." This Act became effective July 1, 2015.

48-8-3.2. Definitions; exemption; applicability; examples.

(a) As used in this Code section, the term:

(1) "Consumable supplies" means tangible personal property, other than machinery and industrial materials, that is consumed or expended during the manufacture of tangible personal property. The term includes, but is not limited to, water treatment chemicals for use in, on, or in conjunction with machinery or equipment and items that are readily disposable. The term excludes packaging supplies and energy.

(2) "Energy" means natural or artificial gas, oil, gasoline, electricity, solid fuel, wood, waste, ice, steam, water, and other materials necessary and integral for heat, light, power, refrigeration, climate control, processing, or any other use in any phase of the manufacture of tangible personal property. The term excludes energy purchased by a manufacturer that is primarily engaged in producing electricity for resale.

(3) "Equipment" means tangible personal property, other than machinery and industrial materials. The term includes durable devices and apparatuses that are generally designed for long-term continuous or repetitive use. The term also includes consumable supplies. Examples of equipment include, but are not limited to, machinery clothing, cones, cores, pallets, hand tools, tooling, molds, dies, waxes, jigs, patterns, conveyors, safety devices, and pollution control devices. The term includes components and repair or replacement parts. The term excludes real property.

(4) "Fixtures" means tangible personal property that has been installed or attached to land or to any building thereon and that is intended to remain permanently in its place. A consideration for whether tangible property is a fixture is whether its removal would cause significant damage to such property or to the real property to which it is attached. Fixtures are classified as real property. Examples of fixtures include, but are not limited to, plumbing, lighting fixtures, slabs, and foundations.

(5) "Industrial materials" means materials for future processing, manufacture, or conversion into articles of tangible personal property for resale when the industrial materials become a component part of the finished product. The term also means materials that are coated upon or impregnated into the product at any stage of its processing, manufacture, or conversion, even though such materials do not remain a component part of the finished product for sale. The term includes raw materials.

(6) "Local sales and use tax" means any sales tax, use tax, or local sales and use tax which is levied and imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to constitutional amendment; by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the "Metropolitan Atlanta Rapid Transit Authority Act of 1965"; and by or pursuant to any article of this chapter.

(7) "Machinery" means an assemblage of parts that transmits force, motion, and energy one to the other in a predetermined manner to accomplish a specific objective. The term includes a machine and all of its components, including, but not limited to, belts, pulleys, shafts, gauges, gaskets, valves, hoses, pipes, wires, blades, bearings, operational structures attached to the machine, including stairways and catwalks, or other devices that are required to regulate or control the machine, allow access to the machine, or enhance or alter its productivity or functionality. The term includes repair or replacement parts. The term excludes real property and consumable supplies.

(8) "Machinery clothing" means felts, screen plates, wires, or any other items used to carry, form, or dry work in process through the manufacture of tangible personal property.

(9) "Manufacture of tangible personal property," used synonymously with the term "manufacturing," means a manufacturing operation, series of continuous manufacturing operations, or series of integrated manufacturing operations engaged in at a manufacturing plant or among manufacturing plants to change, process, transform, or convert industrial materials by physical or chemical means into articles of tangible personal property for sale, for promotional use, or for further manufacturing that have a different form, configuration, utility, composition, or character. The term includes, but is not limited to, the storage, preparation, or treatment of industrial materials; assembly of finished units of tangible personal property to form a new unit or units of tangible personal property; movement of industrial materials and work in process from one manufacturing operation to another; temporary storage between two points in a

continuous manufacturing operation; random and sample testing that occurs at a manufacturing plant; and a packaging operation that occurs at a manufacturing plant.

(10) "Manufacturer" means a person or business, or a location of a person or business, that is engaged in the manufacture of tangible personal property for sale or further manufacturing. To be considered a manufacturer, the person or business, or the location of a person or business, must be:

(A) Classified as a manufacturer under the 2007 North American Industrial Classification System Sectors 21, 31, 32, or 33, or North American Industrial Classification System industry code 22111 or specific code 511110; or

(B) Generally regarded as being a manufacturer.

Businesses that are primarily engaged in providing personal or professional services or in the operation of retail outlets, generally including, but not limited to, grocery stores, pharmacies, bakeries, or restaurants, are not considered manufacturers.

(11) "Manufacturing plant" means any facility, site, or other area where a manufacturer engages in the manufacture of tangible personal property.

(12) "Packaging operation" means bagging, boxing, crating, canning, containerizing, cutting, measuring, weighing, wrapping, labeling, palletizing, or other similar processes necessary to prepare or package manufactured products in a manner suitable for sale or delivery to customers as finished goods or suitable for the transport of work in process at or among manufacturing plants for further manufacturing, and the movement of such finished goods or work in process to a storage or distribution area at a manufacturing plant.

(13) "Packaging supplies" means materials, including, but not limited to, containers, labels, sacks, boxes, wraps, fillers, cones, cores, pallets, or bags, used in a packaging operation solely for packaging tangible personal property.

(14) "Real property" means land, any buildings thereon, and any fixtures attached thereto.

(15) "Repair or replacement part" means a part for any machinery or equipment that is necessary and integral to the manufacture of tangible personal property. Repair or replacement parts must be used to maintain, repair, restore, install, or upgrade such machinery or equipment that is necessary and integral to the manufacture of tangible personal property. Examples of repair and replacement parts may include, but are not limited to, oils, greases, hydraulic

fluids, coolants, lubricants, machinery clothing, molds, dies, waxes, jigs, and other interchangeable tooling.

(16) "Substantial purpose" means the purpose for which an item of tangible personal property is used more than one-third of the time of the total amount of time that the item is in use; alternatively, instead of time, the purpose may be measured in terms of other applicable criteria, including, but not limited to, the number of items produced.

(b) The sale, use, or storage of machinery or equipment which is necessary and integral to the manufacture of tangible personal property and the sale, use, storage, or consumption of industrial materials or packaging supplies shall be exempt from all sales and use taxation.

(c)(1) Except as otherwise provided in paragraph (4) of this subsection, the sale, use, storage, or consumption of energy which is necessary and integral to the manufacture of tangible personal property at a manufacturing plant in this state shall be exempt from all sales and use taxation except for the sales and use tax for educational purposes levied pursuant to Part 2 of Article 3 of this chapter and Article VIII, Section VI, Paragraph IV of the Constitution and except for local sales and use taxes for educational purposes authorized by or pursuant to local constitutional amendment. This exemption shall be phased in over a four-year period as follows:

(A) For the period commencing January 1, 2013, and concluding at the last moment of December 31, 2013, such sale, use, storage, or consumption of energy shall be exempt from an amount equal to 25 percent of the total amount of state sales and use tax that would be collected at the rate of 4 percent on such sale, use, storage, or consumption of energy and shall be exempt from an amount equal to 25 percent of the total amount of each local sales and use tax that would be collected at the rate of 1 percent on such sale, use, storage, or consumption of energy;

(B) For the period commencing January 1, 2014, and concluding at the last moment of December 31, 2014, such sale, use, storage, or consumption of energy shall be exempt from an amount equal to 50 percent of the total amount of state sales and use tax that would be collected at the rate of 4 percent on such sale, use, storage, or consumption of energy and shall be exempt from an amount equal to 50 percent of the total amount of each local sales and use tax that would be collected at the rate of 1 percent on such sale, use, storage, or consumption of energy;

(C) For the period commencing January 1, 2015, and concluding at the last moment of December 31, 2015, such sale, use, storage, or consumption of energy shall be exempt from an amount equal to 75 percent of the total amount of state sales and use tax that would be

collected at the rate of 4 percent on such sale, use, storage, or consumption of energy and shall be exempt from an amount equal to 75 percent of the total amount of each local sales and use tax that would be collected at the rate of 1 percent on such sale, use, storage, or consumption of energy; and

(D) On or after January 1, 2016, such sale, use, storage, or consumption of energy shall be fully exempt from such sales and use taxation.

(2)(A) Any person making a sale of items qualifying for exemption under paragraph (1) of this subsection shall be relieved of the burden of proving such qualification if the person making the sale receives a certificate from the purchaser certifying that the purchase is exempt under this subsection.

(B) Any person who qualifies for the exemption under paragraph (1) of this subsection shall notify and certify to the person making the qualified sale that such exemption is applicable to the sale.

(3) With respect to services which are regularly billed on a monthly basis, the exemption under paragraph (1) of this subsection shall become effective with respect to and the exemption shall apply to services billed on or after January 1, 2013.

(4) If a competitive project of regional significance under paragraph (93) of Code Section 48-8-3 is started in a county or municipality, it shall not be subject to the phase-in period contained in subparagraphs (A), (B), and (C) of paragraph (1) of this subsection, but such project shall receive the full exemption provided for in subparagraph (D) of paragraph (1) of this subsection notwithstanding the January 1, 2016, limitation in that subparagraph.

(d) The exemptions under this Code section shall be applied as follows:

(1) The manufacture of tangible personal property commences as industrial materials are received at a manufacturing plant and concludes once the packaging operation is complete and the tangible personal property is ready for sale or shipment, regardless of whether the manufacture of tangible personal property occurs at one or more separate manufacturing plants;

(2) For machinery or equipment that has multiple purposes, some purposes necessary and integral to the manufacture of tangible personal property and some purposes not necessary and integral to the manufacture of tangible personal property, the substantial purpose of such machinery or equipment will prevail for purposes of determining the eligibility for exemption. The commissioner shall consider any reasonable methodology for measuring the substantial

purpose of machinery or equipment for which the substantial purpose is not readily identifiable;

(3) For leased machinery or equipment that did not qualify for an exemption at the date of lease inception and subsequently qualifies for the exemption under this Code section, the exemption shall apply to all lease payments made subsequent to such qualification;

(4) Miscellaneous spare parts for which the ultimate use of the spare parts is unknown at the time of purchase are eligible for the exemption as repair or replacement parts. However, use tax must be accrued and remitted if spare parts are withdrawn from the inventory of spare parts and used for any purpose other than to maintain, repair, restore, install, or upgrade machinery or equipment that is necessary and integral to the manufacture of tangible personal property; and

(5) Energy necessary and integral to the manufacture of tangible personal property includes energy used to operate machinery or equipment, to create conditions necessary for the manufacture of tangible personal property, or to perform an actual part of the manufacture of tangible personal properly; energy used in administrative or other ancillary activities that are located and performed at the manufacturing plant so long as such activities primarily benefit such manufacture of tangible personal property; energy used in related operations that convey, transport, handle, or store raw materials or finished goods at the manufacturing plant; energy used for heating, cooling, ventilation, illumination, fire safety or prevention, and personal comfort and convenience of the manufacturer's employees at the manufacturing plant; and energy used for any other purpose at a manufacturing plant.

(e) Examples that qualify as necessary and integral to the manufacture of tangible personal property include, but are not limited to:

(1) Machinery or equipment used to convey or transport industrial materials, work in process, consumable supplies, or packaging materials at or among manufacturing plants or to convey and transport finished goods to a distribution or storage point at the manufacturing plant. Specific examples may include, but are not limited to, forklifts, conveyors, cranes, hoists, and pallet jacks;

(2) Machinery or equipment used to gather, arrange, sort, mix, measure, blend, heat, cool, clean, or otherwise treat, prepare, or store industrial materials for further manufacturing;

(3) Machinery or equipment used to control, regulate, heat, cool, or produce energy for other machinery or equipment that is necessary and integral to the manufacture of tangible personal property.

Specific examples may include, but are not limited to, boilers, chillers, condensers, water towers, dehumidifiers, humidifiers, heat exchangers, generators, transformers, motor control centers, solar panels, air dryers, and air compressors;

(4) Testing and quality control machinery or equipment located at a manufacturing plant used to test the quality of industrial materials, work in process, or finished goods;

(5) Starters, switches, circuit breakers, transformers, wiring, piping, and other electrical components, including associated cable trays, conduit, and insulation, located between a motor control center and exempt machinery or equipment or between separate units of exempt machinery or equipment;

(6) Machinery or equipment used to maintain, clean, or repair exempt machinery or equipment;

(7) Machinery or equipment used to provide safety for the employees working at a manufacturing plant, including, but not limited to, safety machinery and equipment required by federal or state law, gloves, ear plugs, face masks, protective eyewear, hard hats or helmets, or breathing apparatuses;

(8) Machinery or equipment used to condition air or water to produce conditions necessary for the manufacture of tangible personal property, including pollution control machinery or equipment and water treatment systems;

(9) Pollution control, sanitizing, sterilizing, or recycling machinery or equipment;

(10) Industrial materials bought for further processing in the manufacture of tangible personal property for sale or further processing or any part of the industrial material or by-product thereof which becomes a wasteful product contributing to pollution problems and which is used up in a recycling or burning process;

(11) Machinery or equipment used in quarrying and mining activities, including blasting, extraction, and crushing; and

(12) Energy used at a manufacturing plant. (Code 1981, § 48-8-3.2, enacted by Ga. L. 2012, p. 257, § 5-2/HB 386; Ga. L. 2014, p. 229, § 1/HB 900.)

The 2014 amendment, effective July 1, 2014, deleted ", equipment," following "machinery" in the first sentence of paragraph (a)(1); in paragraph (a)(3), substituted "machinery and industrial material" for "machinery, industrial materials, and consumable supplies" in the first sentence and added the third sentence; and deleted ", regardless of whether the items would otherwise be considered consumable supplies" at the end of paragraph (e)(7).

48-8-3.3. Definitions; applicability; criteria for eligibility; rules and regulations; dealer performing both manufacturing and agricultural operations; exemption.

(a) As used in this Code section, the term:

(1)(A) "Agricultural machinery and equipment" means machinery and equipment used in the production of agricultural products, including, but not limited to, machinery and equipment used in the production of poultry and eggs for sale, including, but not limited to, equipment used in the cleaning or maintenance of poultry houses; in hatching and breeding of poultry and the breeding of livestock and equine; in production, processing, and storage of fluid milk for sale; in drying, ripening, cooking, further processing, or storage of agricultural products, including, but not limited to, orchard crops; in production of livestock and equine for sale; by a producer of poultry, eggs, fluid milk, equine, or livestock for sale; for the purpose of harvesting agricultural products to be used on the farm by that producer as feed for poultry, equine, or livestock; in tilling the soil or in animal husbandry; machinery and equipment used exclusively for irrigation of agricultural products, including, but not limited to, fruit, vegetable, and nut crops regardless of whether the irrigation machinery or equipment becomes incorporated into real property; and machinery and equipment used to cool agricultural products in storage facilities.

(B) "Agricultural machinery and equipment" shall mean farm tractors and attachments to the tractors; off-road vehicles used primarily in the production of nursery and horticultural crops; self-propelled fertilizer or chemical application equipment sold to persons engaged primarily in producing agricultural products for sale and which are used exclusively in tilling, planting, cultivating, and harvesting agricultural products, including growing, harvesting, or processing onions, peaches, blackberries, blueberries, or other orchard crops, nursery, and other horticultural crops; devices and containers used in the transport and shipment of agricultural products; aircraft exclusively used for spraying agricultural crops; pecan sprayers, pecan shakers, and other equipment used in harvesting pecans sold to persons engaged in the growing, harvesting, and production of pecans; and off-road equipment and related attachments which are sold to or used by persons engaged primarily in the growing or harvesting of timber and which are used exclusively in site preparation, planting, cultivating, or harvesting timber. Equipment used in harvesting shall include all off-road equipment and related attachments used in every forestry procedure starting with the severing of a tree from the ground until and including the point at which the tree or its parts in any form has

been loaded in the field in or on a truck or other vehicle for transport to the place of use. Such off-road equipment shall include, but not be limited to, skidders, feller bunchers, debarkers, delimbers, chip harvesters, tub-grinders, woods cutters, chippers of all types, loaders of all types, dozers, mid-motor graders, and the related attachments; grain bins and attachments to grain bins regardless of whether such grain bins or attachments are incorporated into real property; any repair, replacement, or component parts installed on agricultural machinery and equipment; trailers used to transport agricultural products; all-terrain vehicles and multipassenger rough-terrain vehicles; and any other off-road vehicles used in the production of agricultural or horticultural products.

(2)(A) "Agricultural operations" is used synonymously with the term "agricultural purposes" and means the following activities:

(i) Raising, growing, harvesting, or storing of crops, including, but not limited to, soil preparation and crop production services such as plowing, fertilizing, seed bed preparation, planting, cultivating, and crop protecting services;

(ii) Feeding, breeding, or managing livestock, equine, or poultry;

(iii) Producing or storing feed for use in the production of livestock, including, but not limited to, cattle, calves, swine, hogs, goats, sheep, equine, and rabbits, or for use in the production of poultry, including, but not limited to, chickens, hens, ratites, and turkeys;

(iv) Producing plants, trees, fowl, equine, or other animals;

(v) Producing aquacultural, horticultural, viticultural, silvicultural, grass sod, dairy, livestock, poultry, egg, and apiarian products;

(vi) Processing poultry;

(vii) Post-harvest services on crops with the intent of preparing them for market or further processing, including but not limited to crop cleaning, drying, shelling, fumigating, curing, sorting, grading, packing, ginning, canning, pickling, and cooling;

(viii) Slaughtering poultry and other animals; and

(ix) Manufacturing dairy products.

(B) "Agricultural operations" excludes constructing, installing, altering, repairing, dismantling, or demolishing real property

structures or fixtures, including, but not limited to, grain bins, irrigation equipment, and fencing.

(2.1) "Agricultural products" means items produced by agricultural operations. Agricultural products are considered grown in this state if such products are grown, produced, or processed in this state, whether or not such products are composed of constituent products grown or produced outside this state.

(3) "Agricultural production inputs" means seed; seedlings; plants grown from seed, cuttings, or liners; fertilizers; insecticides; livestock and poultry feeds, drugs, and instruments used for the administration of such drugs; fencing products and materials used to produce agricultural products regardless of whether the fencing products or materials become incorporated into real property; fungicides; rodenticides; herbicides; defoliants; soil fumigants; plant growth regulating chemicals; desiccants, including, but not limited to, shavings and sawdust from wood, peanut hulls, fuller's earth, straw, and hay; feed for animals, including, but not limited to, livestock, fish, equine, hogs, or poultry; sugar used as food for honeybees kept for the commercial production of honey, beeswax, and honeybees; cattle, hogs, sheep, equine, poultry, or bees when sold for breeding purposes; ice or other refrigerants, including, but not limited to, nitrogen, carbon dioxide, ammonia, and propylene glycol used in the processing for market or the chilling of agricultural products in storage facilities, rooms, compartments, or delivery trucks; materials, containers, crates, boxes, labels, sacks, bags, or bottles used for packaging agricultural products when the product is either sold in the containers, sacks, bags, or bottles directly to the consumer or when such use is incidental to the sale of the product for resale; and containers, plastic, canvas, and other fabrics used in the care and raising of agricultural products or canvas used in covering feed bins, silos, greenhouses, and other similar storage structures.

(3.1) "Animal" shall be synonymous with livestock and means living organisms that are commonly regarded as farm animals, organisms that produce tangible personal property for sale, or organisms that are processed, manufactured, or converted into articles of tangible personal property for sale. The term does not include living organisms that are commonly regarded as domestic pets or companion animals.

(4) "Energy used in agriculture" means fuels used for agricultural purposes, other than fuels subject to prepaid state tax as defined in Code Section 48-8-2. The term includes, but is not limited to, off-road diesel, propane, butane, electricity, natural gas, wood, wood products, or wood by-products; liquefied petroleum gas or other fuel used in structures in which broilers, pullets, or other poultry are raised, in

which swine are raised, in which dairy animals are raised or milked or where dairy products are stored on a farm, in which agricultural products are stored, and in which plants, seedlings, nursery stock, or floral products are raised primarily for the purposes of making sales of such plants, seedlings, nursery stock, or floral products for resale; electricity or other fuel for the operation of an irrigation system which is used on a farm exclusively for the irrigation of agricultural products; and electricity or other fuel used in the drying, cooking, or further processing of raw agricultural products, including, but not limited to, food processing of raw agricultural products.

(5) "Qualified agricultural producer" includes producers of agricultural products who meet one of the following criteria:

(A) The person or entity is the owner or lessee of agricultural land or other real property from which $2,500.00 or more of agricultural products were produced and sold during the year, including payments from government sources;

(B) The person or entity is in the business of performing agricultural operations and has provided $2,500.00 of such services during the year;

(C) The person or entity is in the business of producing long-term agricultural products from which there might not be annual income, including, but not limited to, timber, pulpwood, orchard crops, pecans, and horticultural or other multiyear agricultural or farm products. Applicants must demonstrate that sufficient volumes of such long-term agricultural products will be produced which have the capacity to generate at least $2,500.00 in sales annually in the future; or

(D) The person or entity must establish, to the satisfaction of the Commissioner of Agriculture, that the person or entity is actively engaged in the production of agricultural products and has or will have created sufficient volumes to generate at least $2,500.00 in sales annually.

(b) The sales and use taxes levied or imposed by this article shall not apply to sales to, or use by, a qualified agricultural producer of agricultural production inputs, energy used in agriculture, and agricultural machinery and equipment.

(c) The Commissioner of Agriculture shall require applicants to acknowledge and produce, upon request, at least one of the following forms to determine eligibility under this Code section:

(1) Business activity on IRS schedule F (Profit or Loss from Farming);

(2) Farm rental activity on IRS form 4835 (Farm Rental Income and Expenses) or schedule E (Supplemental Income and Loss);

(3) IRS Form 4797;

(4) IRS Form 1065; or

(5) IRS Form 1120 or 1120(s).

(d) Qualified agricultural producers that meet the criteria provided for in paragraph (5) of subsection (a) of this Code section must apply to the Commissioner of Agriculture to request an agricultural sales and use tax exemption certificate that contains an exemption number. Upon request, the qualified agricultural producer shall produce the form requested by the Commissioner of Agriculture under subsection (c) of this Code section to the commissioner. To facilitate the use of the exemption certificate, a wallet-sized card containing that same information shall also be issued by the Commissioner of Agriculture.

(e) The Commissioner of Agriculture is authorized to promulgate rules and regulations governing the issuance of agricultural exemption certificates and the administration of this Code section. The Commissioner of Agriculture is authorized to establish an oversight board and direct staff and is authorized to charge annual fees of not less than $15.00 nor more than $25.00 per year in accordance with Code Section 2-1-5, but in no event shall the total amount of the proceeds from such fees exceed the cost of administering this Code section.

(f) The commissioner is authorized to promulgate rules and regulations as necessary to facilitate compliance with and the administration of the provisions of this Code section. The department, in conjunction with the Department of Agriculture, is authorized to conduct audits, as necessary, to monitor compliance with the provisions of this Code section.

(g) A dealer that performs both manufacturing and agricultural operations at a single place of business may avail itself of the exemptions under either Code Section 48-8-3.2 or this Code section, but not both, for that place of business in any one calendar year.

(h) Notwithstanding subsection (c) of Code Section 48-8-63, contractors shall not incur any use tax on:

(1) Tangible personal property that a qualified agricultural producer purchases tax-exempt under this Code section and furnishes to such contractor for use in the performance of an agricultural operation, so long as such property retains the character of tangible personal property and is returned to the qualified agricultural producer upon the completion of the contract; or

(2) Grain bins, irrigation equipment, and fencing or the repair, replacement, or component parts to grain bins, irrigation equipment,

or fencing that a qualified agricultural producer purchases tax-exempt under this Code section for use in an agricultural operation and furnishes to such contractor for installation into real property. (Code 1981, § 48-8-3.3, enacted by Ga. L. 2012, p. 257, § 5-3/HB 386; Ga. L. 2013, p. 7, § 5/HB 266; Ga. L. 2014, p. 288, § 1/HB 983.)

The 2014 amendment, effective January 1, 2015, rewrote this Code section. See editor's note for applicability.

Editor's notes. — Ga. L. 2014, p. 288, § 3/HB 983, not codified by the General Assembly, provides that: "This Act shall become effective on January 1, 2015, and shall be applicable to all taxable years beginning on or after January 1, 2015."

48-8-6. Prohibition of political subdivisions from imposing various taxes; ceiling on local sales and use taxes; taxation of mobile telecommunications.

(a) There shall not be imposed in any jurisdiction in this state or on any transaction in this state local sales taxes, local use taxes, or local sales and use taxes in excess of 2 percent. For purposes of this prohibition, the taxes affected are any sales tax, use tax, or sales and use tax which is levied in an area consisting of less than the entire state, however authorized, including such taxes authorized by or pursuant to constitutional amendment, except that the following taxes shall not count toward or be subject to such 2 percent limitation:

(1) A sales and use tax for educational purposes exempted from such limitation under Article VIII, Section VI, Paragraph IV of the Constitution;

(2) Any tax levied for purposes of a metropolitan area system of public transportation, as authorized by the amendment to the Constitution set out at Georgia Laws, 1964, page 1008; the continuation of such amendment under Article XI, Section I, Paragraph IV(d) of the Constitution; and the laws enacted pursuant to such constitutional amendment; provided, however, that the exception provided for under this paragraph shall only apply:

(A) In a county in which a tax is being imposed under subparagraph (a)(1)(D) of Code Section 48-8-111 in whole or in part for the purpose or purposes of a water capital outlay project or projects, a sewer capital outlay project or projects, a water and sewer capital outlay project or projects, water and sewer projects and costs as defined under paragraph (4) of Code Section 48-8-200, or any combination thereof and with respect to which the county has entered into an intergovernmental contract with a municipality, in which the average waste-water system flow of such municipality is not less than 85 million gallons per day, allocating proceeds to such

municipality to be used solely for water and sewer projects and costs as defined under paragraph (4) of Code Section 48-8-200. The exception provided for under this subparagraph shall apply only during the period the tax under such subparagraph (a)(1)(D) is in effect. The exception provided for under this subparagraph shall not apply in any county in which a tax is being imposed under Article 2A of this chapter;

(B) In a county in which the tax levied for purposes of a metropolitan area system of public transportation is first levied after January 1, 2010, and before November 1, 2016. Such tax shall not apply to the following:

(i) The sale or use of jet fuel to or by a qualifying airline at a qualifying airport. For purposes of this division, a "qualifying airline" means any person which is authorized by the Federal Aviation Administration or another appropriate agency of the United States to operate as an air carrier under an air carrier operating certificate and which provides regularly scheduled flights for the transportation of passengers or cargo for hire. For purposes of this division, a "qualifying airport" means any airport in this state that has had more than 750,000 takeoffs and landings during a calendar year; and

(ii) The sale of motor vehicles; or

(C) In a county in which a tax is levied and collected pursuant to Part 2 of Article 2A of this chapter;

(3) In the event of a rate increase imposed pursuant to Code Section 48-8-96, only the amount in excess of the initial 1 percent sales and use tax and in the event of a newly imposed tax pursuant to Code Section 48-8-96, only the amount in excess of a 1 percent sales and use tax;

(4) A sales and use tax levied under Article 4 of this chapter;

(5) A sales and use tax levied under Article 5 of this chapter; and

(6) A sales and use tax levied under Article 5A of this chapter.

If the imposition of any otherwise authorized local sales tax, local use tax, or local sales and use tax would result in a tax rate in excess of that authorized by this subsection, then such otherwise authorized tax may not be imposed.

(b) Reserved.

(c) Where the exception specified in paragraph (2) of subsection (a) of this Code section applies, the tax imposed under subparagraph (a)(1)(D) of Code Section 48-8-111 shall not apply to:

(1) Reserved; and

(2) The sale of motor vehicles.

(c.1) Where the exception specified in paragraph (2) of subsection (a) of this Code section applies, on and after July 1, 2007, the aggregate amount of all excise taxes imposed under paragraph (5) of subsection (a) of Code Section 48-13-51 and all sales and use taxes shall not exceed 14 percent.

(d) Notwithstanding any law or ordinance to the contrary, any tax, charge, or fee levied by any political subdivision of this state and applicable to mobile telecommunications services, as defined in Section 124(7) of the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. Section 124(7), shall apply only if the customer's place of primary use is located within the boundaries of the political subdivision levying such local tax, charge, or fee. For purposes of this subsection, the provisions of Code Section 48-8-13 shall apply in the same manner and to the same extent as such provisions apply to the tax levied by Code Section 48-8-1 on mobile telecommunications services. This subsection shall not be construed to authorize the imposition of any tax, charge, or fee. (Ga. L. 1951, p. 360, § 25; Ga. L. 1965, p. 451, § 3; Ga. L. 1971, p. 85, § 1A; Ga. L. 1971, p. 95, § 1; Ga. L. 1975, p. 984, § 1; Ga. L. 1975, p. 1002, § 6; Ga. L. 1977, p. 744, § 5; Code 1933, § 91A-4534, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1983, p. 3, § 37; Ga. L. 1985, p. 232, § 3; Ga. L. 2002, p. 576, § 1; Ga. L. 2002, p. 970, § 1; Ga. L. 2003, p. 665, § 13; Ga. L. 2004, p. 69, § 5; Ga. L. 2005, p. 60, § 48/HB 95; Ga. L. 2010, p. 662, § 3/HB 1221; Ga. L. 2010, p. 778, § 5/HB 277; Ga. L. 2010, p. 813, § 1/HB 1393; Ga. L. 2010, p. 878, § 48/HB 1387; Ga. L. 2014, p. 475, § 1/HB 1009; Ga. L. 2014, p. 649, § 2/HB 265; Ga. L. 2015, p. 217, § 1/HB 215; Ga. L. 2015, p. 236, § 7-4/HB 170.)

The 2014 amendments. — The first 2014 amendment, effective July 1, 2014, substituted "2016" for "2012" in subparagraph (a)(2)(B). The second 2014 amendment, effective June 1, 2014, made identical changes.

The 2015 amendments. — The first 2015 amendment, effective May 4, 2015, in subparagraph (a)(2)(A), substituted "such subparagraph" for "said subparagraph" in the second sentence and deleted "or" at the end of subparagraph (a)(2)(A); in division (a)(2)(B)(i), substituted "this state" for "the state" near the end; inserted "or" at the end of division (a)(2)(B)(ii); and added subparagraph (a)(2)(C). The second 2015 amendment, effective July 1, 2015, in subsection (a), deleted "and" at the end of paragraph (a)(4), substituted "; and" for a period at the end of paragraph (a)(5), and added paragraph (a)(6). See editor's note for applicability.

Editor's notes. — Ga. L. 2014, p. 649, § 3/HB 265, not codifed by the General Assembly, provides that the 2014 amendment "shall become effective on June 1, 2014, only if an Act providing for the suspension of restrictions on the use of annual proceeds from sales and use taxes by the Metropolitan Atlanta Rapid Transit Authority and reconstituting the board of directors of the Metropolitan Atlanta Rapid Transit Authority is enacted at the 2014 regular session of the General Assembly." This contingency was met by the passage of HB 264 (Ga. L. 2014, p. 634).

Ga. L. 2015, p. 236, § 8-1/HB 170, not codified by the General Assembly, pro-

vides that: "This Act shall be known and may be cited as the 'Transportation Funding Act of 2015.'"

Ga. L. 2015, p. 236, § 8-2/HB 170, not codified by the General Assembly, provides that: "It is the intention of the General Assembly, subject to appropriations and other constitutional obligations of this state, that year to year revenue increases be prioritized to fund education, transportation, and health care in this state."

Ga. L. 2015, p. 236, § 9-1(b)/HB 170, not codified by the General Assembly, provides that: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of this Act." This Act became effective July 1, 2015.

48-8-17. Suspension of the collection of taxes on motor fuels and aviation gasoline; ratification of temporary suspension.

(a) The General Assembly finds that:

(1) Motor fuels and aviation gasoline are essential commodities used by Georgians for transportation;

(2) The price of gasoline has fluctuated dramatically since the adjournment of the 2014 General Assembly;

(3) It is the intention of this state to stabilize the rate of taxation on motor fuels and aviation gasoline during periods of volatile price swings; and

(4) Code Section 45-12-22 authorizes the Governor to suspend the collection of taxes, or any part thereof, due the state until the meeting of the next General Assembly.

(b) The General Assembly of Georgia ratifies the Executive Order of the Governor dated December 5, 2014, and filed in the official records of the office of the Governor as Executive Order 12.05.14.02 which suspended commencing on December 5, 2014, the collection of any rate of prepaid state taxes as defined in paragraph (24) of Code Section 48-8-2 to the extent it differs from the rate levied as of June 1, 2014, pursuant to Code Section 48-9-14 as it applies to sales of motor fuel and aviation gasoline as those terms are defined in Code Section 48-9-2. The period of suspension under this subsection shall conclude at the last moment of December 31, 2015.

(c) The ratification of the temporary suspension of collection of prepaid state tax shall not apply to prepaid local taxes as defined in paragraph (23) of Code Section 48-8-2.

(d) The commissioner is authorized to prescribe forms and promulgate rules and regulations deemed necessary in order to administer and effectuate this Code section. (Code 1981, § 48-8-17, enacted by Ga. L. 2015, p. 48, § 1/HB 319.)

Effective date. — This Code section became effective April 15, 2015.

The 2014 amendment, effective April 29, 2014, part of an Act to revise, modernize, and correct the Code, deleted "and" at the end of paragraph (a)(4).

Editor's notes. — This Code section formerly pertained to the temporary suspension of the collection of taxes on gasoline and aviation fuel. The former Code section was based on Code 1981, § 48-8-17, and Ga. L. 2013, p. 784, § 1/HB 210; Ga. L. 2014, p. 866, § 48/SB 340 and was repealed by Ga. L. 2015, p. 48, § 1, effective April 15, 2015.

Part 2

Imposition, Rate, Collection, and Assessment

48-8-30. Imposition of tax; rates; collection.

(a) There is levied and imposed a tax on the retail purchase, retail sale, rental, storage, use, or consumption of tangible personal property and on the services described in this article.

(b)(1) Every purchaser of tangible personal property at retail in this state shall be liable for a tax on the purchase at the rate of 4 percent of the sales price of the purchase. The tax shall be paid by the purchaser to the retailer making the sale, as provided in this article. The retailer shall remit the tax to the commissioner as provided in this article and, when received by the commissioner, the tax shall be a credit against the tax imposed on the retailer. Every person making a sale or sales of tangible personal property at retail in this state shall be a retailer and a dealer and shall be liable for a tax on the sale at the rate of 4 percent of the sales price, or the amount of taxes collected by him from his purchaser or purchasers, whichever is greater.

(2) No retail sale shall be taxable to the retailer or dealer which is not taxable to the purchaser at retail.

(c)(1) Upon the first instance of use, consumption, distribution, or storage within this state of tangible personal property purchased at retail outside this state, the owner or user of the property shall be a dealer and shall be liable for a tax at the rate of 4 percent of the purchase price, except as provided in paragraph (2) of this subsection.

(2) Upon the first instance of use, consumption, distribution, or storage within this state of tangible personal property purchased at retail outside this state and used outside this state for more than six months prior to its first use within this state, the owner or user of the property shall be a dealer and shall be liable for a tax at the rate of 4 percent of the purchase price or fair market value of the property, whichever is the lesser.

(3) This subsection shall not be construed to require a duplication in the payment of the tax. The tax imposed by this subsection shall be

subject to the credit otherwise granted by this article for like taxes previously paid in another state.

(c.1)(1) Every purchaser of tangible personal property at retail outside this state from a dealer, as defined in Code Section 48-8-2, when such property is to be used, consumed, distributed, or stored within this state, shall be liable for a tax on the purchase at the rate of 4 percent of the sales price of the purchase. It shall be prima-facie evidence that such property is to be used, consumed, distributed, or stored within this state if that property is delivered in this state to the purchaser or agent thereof. The tax shall be paid by the purchaser to the retailer making the sale, as provided in this article. The retailer shall remit the tax to the commissioner as provided in this article and, when received by the commissioner, the tax shall be a credit against the tax imposed on the retailer. Every person who is a dealer, as defined in Code Section 48-8-2, and who makes any sale of tangible personal property at retail outside this state which property is to be delivered in this state to a purchaser or purchaser's agent shall be a retailer and a dealer for purposes of this article and shall be liable for a tax on the sale at the rate of 4 percent of such sales price or the amount of tax as collected by that person from purchasers having their purchases delivered in this state, whichever is greater.

(2) No retail sale shall be taxable to the retailer or dealer which is not taxable to the purchaser at retail. The tax imposed by this subsection shall be subject to the credit otherwise granted by this article for like taxes previously paid in another state. This subsection shall not be construed to require a duplication in the payment of the tax.

(d)(1) Every person to whom tangible personal property in the state is leased or rented shall be liable for a tax on the lease or rental at the rate of 4 percent of the sales price. The tax shall be paid to the person who leases or rents the property by the person to whom the property is leased or rented. A person who leases or rents property to others as a dealer under this article shall remit the tax to the commissioner as provided in this article. When received by the commissioner, the tax shall be a credit against the tax imposed on the person who leases or rents the property to others. Every person who leases or rents tangible personal property in this state to others shall be a dealer and shall be liable for a tax on the lease or rental at the rate of 4 percent of the sales price, or the amount of taxes collected by him from persons to whom he leases or rents tangible personal property, whichever is greater.

(2) No lease or rental shall be taxable to the person who leases or rents tangible property to another which is not taxable to the person to whom the property is leased or rented.

(3) The lessee of both taxable and exempt property in this state under a single lease agreement containing a lease period of ten years or more shall have the option to discharge in full all sales and use taxes imposed by this article relating to the tangible personal property by paying in a lump sum 4 percent of the fair market value of the tangible personal property at the date of inception of the lease agreement in the same manner and under the same conditions applicable to sales of the tangible personal property.

(e) Upon the first instance of use within this state of tangible personal property leased or rented outside this state, the person to whom the property is leased or rented shall be a dealer and shall be liable for a tax at the rate of 4 percent of the sales price paid to the person who leased or rented the property, subject to the credit authorized for like taxes previously paid in another state.

(e.1)(1) Every person who leases, as lessor, or rents tangible personal property outside this state for use within this state shall be liable for a tax at the rate of 4 percent of the sales price paid for that lease or rental if that person is a dealer, as defined in Code Section 48-8-2, and title to that property remains in that person. It shall be prima-facie evidence that such property is to be used within this state if that property is delivered in this state to the lessee or renter of such property, or to the agent of either. The tax shall be paid by the lessee or renter and payment of the tax shall be made to the lessor or person receiving rental payments for that property, which person shall be the dealer for purposes of this article. The dealer shall remit the tax to the commissioner as provided in this article and, when received by the commissioner, the tax shall be a credit against the tax imposed on the dealer. Every person who is a dealer, as defined in Code Section 48-8-2, and who leases or rents tangible personal property outside this state to be delivered in this state to the lessee, renter, or agent of either shall be a dealer and shall be liable as such for a tax on the lease or rental at the rate of 4 percent of the sales price from such leases or rentals or the amount of taxes collected by that dealer for leases or rentals of tangible personal property delivered in this state, whichever is greater.

(2) No lease or rental shall be taxable to the dealer which is not taxable to the lessee or renter. The tax imposed by this subsection shall be subject to the credit granted by this article for like taxes previously paid in another state. This subsection shall not be construed to require a duplication in the payment of the tax.

(f)(1) Every person purchasing or receiving any service within this state, the purchase of which is a retail sale, shall be liable for tax on the purchase at the rate of 4 percent of the sales price made for the purchase. The tax shall be paid by the person purchasing or receiving

the service to the person furnishing the service. The person furnishing the service, as a dealer under this article, shall remit the tax to the commissioner as provided in this article; and, when received by the commissioner, the tax shall be a credit against the tax imposed on the person furnishing the service. Every person furnishing a service, the purchase of which is a retail sale, shall be a dealer and shall be liable for a tax on the sale at the rate of 4 percent of the sales price made for furnishing the service, or the amount of taxes collected by him from the person to whom the service is furnished, whichever is greater.

(2) No sale of services shall be taxable to the person furnishing the service which is not taxable to the purchaser of the service.

(g) Whenever a purchaser of tangible personal property under subsection (b) or (c.1) of this Code section, a lessee or renter of the property under subsection (d) or (e.1) of this Code section, or a purchaser of taxable services under subsection (f) of this Code section does not pay the tax imposed upon him or her to the retailer, lessor, or dealer who is involved in the taxable transaction, the purchaser, lessee, or renter shall be a dealer himself or herself and the commissioner, whenever he or she has reason to believe that a purchaser or lessee has not so paid the tax, may assess and collect the tax directly against and from the purchaser, lessee, or renter, unless the purchaser, lessee, or renter shows that the retailer, lessor, or dealer who is involved in the transaction has nevertheless remitted to the commissioner the tax imposed on the transaction. If payment is received directly from the purchaser, it shall not be collected a second time from the retailer, lessor, or dealer who is involved.

(h) The tax imposed by this Code section shall be collected from the dealer and paid at the time and in the manner provided in this article. Any person engaging or continuing in business as a retailer and wholesaler or jobber shall pay the tax imposed on the sales price of retail sales of the business at the rate specified when proper books are kept showing separately the gross proceeds of sales for each business. If the records are not kept separately, the tax shall be paid as a retailer or dealer on the gross sales of the business. For the purpose of this Code section, all sales through any one vending machine shall be treated as a single sale. The gross proceeds for reporting vending sales shall be treated as if the tax is included in the sale and the taxable proceeds shall be net of the tax included in the sale.

(i) The tax levied by this Code section is in addition to all other taxes, whether levied in the form of excise, license, or privilege taxes, and shall be in addition to all other fees and taxes levied.

(j) In the event any distributor licensed under Chapter 9 of this title purchases any motor fuel on which the prepaid state tax or prepaid

local tax or both have been imposed pursuant to this Code section and resells the same to a governmental entity that is totally or partially exempt from such tax under paragraph (1) of Code Section 48-8-3, such distributor shall be entitled to either a credit or refund. The amount of the credit or refund shall be the prepaid state tax or prepaid local tax or both rates for which such governmental entity is exempt multiplied by the gallons of motor fuel purchased for its exclusive use. To be eligible for the credit or refund, the distributor shall reduce the amount such distributor charges for the fuel sold to such governmental entity by an amount equal to the tax from which such governmental entity is exempt. Should a distributor have a liability under this Code section, the distributor may elect to take a credit for those sales against such liability.

(k) The prepaid local tax shall be imposed at the time tax is imposed under Code Section 48-9-3. (Ga. L. 1951, p. 360, § 2; Ga. L. 1960, p. 153, § 1; Ga. L. 1967, p. 284, § 1; Code 1933, § 91A-4502, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 10, § 24; Ga. L. 1989, p. 62, § 5; Ga. L. 1990, p. 1243, §§ 2-4; Ga. L. 1992, p. 6, § 48; Ga. L. 1996, p. 1635, § 1; Ga. L. 1998, p. 602, § 4; Ga. L. 2001, p. 4, § 48; Ga. L. 2001, p. 984, § 17; Ga. L. 2007, p. 309, § 2/HB 219; Ga. L. 2010, p. 662, § 7/HB 1221; Ga. L. 2011, p. 674, § 1-4/HB 117; Ga. L. 2013, p. 141, § 48/HB 79; Ga. L. 2015, p. 236, § 5-5/HB 170.)

The 2015 amendment, effective July 1, 2015, substituted "under Code Section 48-9-3" for "under subparagraph (b)(2)(B) of Code Section 48-9-14" at the end of subsection (k). See editor's note for applicability.

Editor's notes. — Former paragraph (f)(3), concerning accrual of assessments for state sales and use tax, was repealed by operation of law on June 30, 2014, pursuant to Ga. L. 2011, p. 674, § 1-4/HB 117.

Ga. L. 2015, p. 236, § 8-1/HB 170, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Transportation Funding Act of 2015.'"

Ga. L. 2015, p. 236, § 8-2/HB 170, not codified by the General Assembly, provides that: "It is the intention of the General Assembly, subject to appropriations and other constitutional obligations of this state, that year to year revenue increases be prioritized to fund education, transportation, and health care in this state."

Ga. L. 2015, p. 236, § 9-1(b)/HB 170, not codified by the General Assembly, provides that: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of this Act." This Act became effective July 1, 2015.

48-8-39. Effect of use other than retention, demonstration, or display by giver of certificate or by processor, manufacturer, or converter.

(a) If a purchaser who gives a certificate stating that property is purchased for resale makes any use of the property other than reten-

tion, demonstration, or display while holding it for sale in the regular course of business, the use shall be deemed a retail sale by the purchaser as of the time the property is first used by him and the purchase price of the property to him shall be deemed the gross receipts from the retail sale. If the sole use of the property other than retention, demonstration, or display in the regular course of business is the rental of the property while holding it for sale or the transportation of persons for hire while holding the property for sale, the purchaser may elect to include in his gross receipts either the amount of the rental charged or the total amount of the charges made by him for the transportation rather than the cost of the property to him.

(b)(1)(A) If a person who engages in the business of processing, manufacturing, or converting industrial materials into articles of tangible personal property for sale, whether as custom-made or stock items, makes any use of the article of tangible personal property other than retaining, demonstrating, or displaying it for sale, the use shall be deemed a retail sale as of the time the article is first used by such person and its fair market value at the time shall be deemed the sales price of the article, except as otherwise provided in subparagraph (B) of this paragraph.

(B)(i) As used in this subparagraph, the term "total raw material cost" means the manufactured cost of floor covering samples; supplies used in the manufacturing of floor covering samples such as binding, grommets, and similar items; floor covering sample display devices such as racks, binders, and similar items; and inbound freight charges. Such term does not mean or include labor or overhead for assembling or producing samples from finished floor covering and does not mean or include outbound freight charges which may be charged to the expense account for floor covering samples.

(ii) As used in this subparagraph, the term "floor covering sample" or "floor covering samples" includes, but is not limited to, samples of carpet floor covering, hardwood floor covering, engineered hardwood floor covering, laminate floor covering, stone floor covering, tile floor covering, vinyl floor covering, resilient floor covering, linoleum floor covering, and other floor coverings.

(iii) For purposes of subparagraph (A) of this paragraph, the fair market value of any floor covering sample shall be equal to 21.9 percent of the total raw material cost of the sample, except that the fair market value of a sample of any floor covering that is manufactured exclusively for commercial use shall be equal to 1 percent of the total raw material cost of the sample.

(2) If the sole use of the article other than retaining, demonstrating, or displaying it for sale is the rental of the article while holding

it for sale, the processor, manufacturer, or converter may elect to treat the amount of the rental charged rather than the fair market value of the article as its sales price. (Ga. L. 1951, p. 360, § 8; Ga. L. 1968, p. 496, § 1; Ga. L. 1970, p. 595, § 1; Code 1933, § 91A-4508, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 2003, p. 385, § 1; Ga. L. 2006, p. 470, § 1/HB 1040; Ga. L. 2010, p. 662, § 11/HB 1221; Ga. L. 2015, p. 910, § 1/HB 277.)

The 2015 amendment, effective July 1, 2015, in subparagraph (b)(1)(B), substituted "floor covering" for "carpet" throughout division (b)(1)(B)(i), added division (b)(1)(B)(ii), redesignated former division (b)(1)(B)(ii) as present division (b)(1)(B)(iii), and, in division (b)(1)(B)(iii), substituted "floor covering" for "carpet" and substituted "any floor covering" for "carpet" near the middle.

48-8-49. Dealers' returns as to gross proceeds of sales and purchases; returns based on estimated tax liability; returns as to rentals or leases; granting of extensions.

(a) Each dealer, on or before the twentieth day of each month, shall transmit returns to the commissioner showing the gross sales and purchases arising from all sales and purchases taxable under this article during the preceding calendar month. The commissioner may provide by regulation for quarterly or annual returns or, upon application, may permit a dealer to file a return on a quarterly or annual basis if deemed advisable by the commissioner. The returns required by this subsection shall be made upon forms prescribed, prepared, and furnished by the commissioner.

(b)(1) As used in this subsection, the term "estimated tax liability" means a dealer's tax liability, adjusted to account for any subsequent change in the state sales and use tax rate, based on the dealer's average monthly payments for the last calendar year.

(2) If the tax liability of a dealer in the preceding calendar year was greater than $60,000.00 excluding local sales taxes, the dealer shall file a return and remit to the commissioner not less than 50 percent of the estimated tax liability for the taxable period on or before the twentieth day of the period. The amount of the payment of the estimated tax liability shall be credited against the amount to be due on the return required under subsection (a) of this Code section.

(c) Rentals or leases of tangible personal property shall be reported and the tax shall be paid with respect to the sales price in accordance with the rules and regulations prescribed by the commissioner.

(d)(1) The commissioner, in his discretion, may grant extensions, upon written application, to the end of the calendar month in which any tax return is due under this Code section.

(2) No extension granted pursuant to paragraph (1) of this subsection shall be valid unless granted in writing and only for a period of not more than 12 consecutive months.

(3) Upon the grant of any extension authorized by this subsection, the taxpayer shall remit to the commissioner on or before the date the tax would otherwise become due without the grant of the extension an amount which, when added to the amount previously remitted for the period pursuant to subsection (b) of this Code section, equals not less than 100 percent of the dealer's payment for the corresponding period of the preceding tax year.

(4) No interest or penalty shall be charged, assessed, or collected by reason of the granting of an extension pursuant to this subsection.

(5) This subsection shall apply to all extensions granted pursuant to this subsection on or after July 1, 1980, and to all extensions granted pursuant to this subsection and in effect on July 1, 1980. (Ga. L. 1951, p. 360, § 16; Ga. L. 1952, p. 334, § 1; Ga. L. 1960, p. 153, § 7; Ga. L. 1972, p. 8, § 1; Code 1933, § 91A-4521, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 10, § 27; Ga. L. 1989, p. 62, § 8; Ga. L. 1990, p. 1243, § 5; Ga. L. 1996, p. 780, § 3; Ga. L. 2003, p. 355, § 4; Ga. L. 2003, p. 665, § 14; Ga. L. 2006, p. 530, § 1/HB 1120; Ga. L. 2010, p. 662, § 13/HB 1221; Ga. L. 2011, p. 38, § 7/HB 168; Ga. L. 2015, p. 236, § 5-6/HB 170.)

The 2015 amendment, effective July 1, 2015, deleted the former last sentence of paragraph (b)(2), which read: "This subsection shall not apply to any dealer whose primary business is the sale of motor fuels who is remitting prepaid state tax under paragraph (2) of subsection (b) of Code Section 48-9-14." See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 236, § 8-1/HB 170, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Transportation Funding Act of 2015.'"

Ga. L. 2015, p. 236, § 8-2/HB 170, not codified by the General Assembly, provides that: "It is the intention of the General Assembly, subject to appropriations and other constitutional obligations of this state, that year to year revenue increases be prioritized to fund education, transportation, and health care in this state."

Ga. L. 2015, p. 236, § 9-1(b)/HB 170, not codified by the General Assembly, provides that: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of this Act." This Act became effective July 1, 2015.

48-8-50. Compensation of dealers for reporting and paying tax; reimbursement deduction.

(a) As used in this Code section, the term "affiliated entity" means with respect to any corporation, sole proprietorship, partnership, limited partnership, enterprise, franchise, association, trust, joint venture, or other entity, any other corporation, sole proprietorship, partnership,

limited partnership, enterprise, franchise, association, trust, joint venture, or other entity related thereto:

(1) As a parent, subsidiary, sister, or daughter corporation, sole proprietorship, partnership, limited partnership, enterprise, franchise, association, trust, joint venture, or other entity;

(2) By control of one corporation, sole proprietorship, partnership, limited partnership, enterprise, franchise, association, trust, joint venture, or other entity by the other; or

(3) By any other common ownership or control.

(b) Each dealer required to file a return under this article shall include such dealer's certificate of registration number or numbers for each sales location or affiliated entity of such dealer on such return. In reporting and paying the amount of tax due under this article, each dealer shall be allowed the following deduction, but only if the return was timely filed and the amount due was not delinquent at the time of payment; and that deduction shall be subject to the provisions of subsection (f) of this Code section pertaining to calculation of the deduction when more than one tax is reported on the same return:

(1) With respect to each certificate of registration number on such return, a deduction of 3 percent of the first $3,000.00 of the combined total amount of all sales and use taxes reported due on such return for each location other than the taxes specified in paragraph (3) of this subsection;

(2) With respect to each certificate of registration number on such return, a deduction of one-half of 1 percent of that portion exceeding $3,000.00 of the combined total amount of all sales and use taxes reported due on such return for each location other than the taxes specified in paragraph (3) of this subsection; and

(3) With respect to each certificate of registration number on such return, a deduction of 3 percent of the combined total amount due of all sales and use taxes on motor fuel as defined under paragraph (9) of Code Section 48-9-2, which are imposed under any provision of this title, including, but not limited to, sales and use taxes on motor fuel imposed under any of the provisions described in subsection (f) of this Code section.

(c) The department shall compile and maintain a master registry of the certificate of registration numbers filed on such returns with respect to all the affiliated business entities and multiple locations of each dealer and shall assign a master number to each dealer. Each dealer required to file a return under this article shall also include such dealer's master number on such return if such number has been assigned by the department under this subsection.

(d) With respect to a dealer which consists of only a single sales location or which consists of a group of fewer than four sales locations or affiliated entities, or any combination thereof, claiming such deduction, a separate return shall be filed for each sales location and affiliated entity for each reporting period. With respect to a dealer which consists of a group of four or more sales locations or affiliated entities, or any combination thereof, claiming such deduction, a single, consolidated return shall be filed for such entire group. A consolidated return under this subsection shall be used for the purpose of identifying the sales locations or affiliated entities of a dealer and such consolidated return shall identify separately the reporting and paying of the tax due under this article for each sales location or affiliated entity of such dealer. The deduction requirements of subsection (b) of this Code section shall apply separately to each certificate of registration number on such return.

(e) No deduction shall be allowed under this Code section unless all of the requirements of subsections (b), (c), and (d) of this Code section have been satisfied.

(f) The deduction authorized under this Code section shall be combined with and calculated with the deductions authorized under Code Section 48-8-87, Code Section 48-8-104, Code Section 48-8-113, Code Section 48-8-204, Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the "Metropolitan Atlanta Rapid Transit Authority Act of 1965," and any other sales tax, use tax, or sales and use tax which is levied and imposed in an area consisting of less than the entire state, however authorized, by applying the deduction rate specified in this Code section against the combined total of all such taxes reported due on the same return.

(g) The reimbursement deduction authorized under Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the "Metropolitan Atlanta Rapid Transit Authority Act of 1965," shall be at the rate and subject to the requirements specified under subsections (b) through (f) of this Code section.

(h) Each certified service provider as defined in Code Section 48-8-161 shall receive the amount provided in the contract between the certified service provider and the Streamlined Sales Tax Governing Board. (Ga. L. 1951, p. 360, § 16; Ga. L. 1964, p. 57, § 1; Ga. L. 1965, p. 321, § 1; Ga. L. 1966, p. 505, § 1; Ga. L. 1975, p. 101, § 1; Code 1933, § 91A-4522, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1992, p. 815, § 1; Ga. L. 1993, p. 995, § 1; Ga. L. 2003, p. 355, § 5; Ga. L. 2003, p. 665, § 15; Ga. L. 2004, p. 425, § 1; Ga. L. 2005, p. 159, § 23/HB 488; Ga. L. 2007, p. 309, § 3/HB 219; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2010, p. 662, § 14/HB 1221; Ga. L. 2015, p. 236, § 5-7/HB 170.)

The 2015 amendment, effective July 1, 2015, in subsection (b), added "and" at the end of paragraph (b)(2), substituted a period for ", but not including Code Section 48-9-14; and" at the end of paragraph (b)(3), and deleted former paragraph (b)(4), which read: "A deduction with respect to Code Section 48-9-14, as defined in Code Section 48-8-2, shall be at the rate of one-half of 1 percent of the total amount due of the prepaid state tax reported due on such return, so long as the return and payment are timely, regardless of the classification of tax return upon which the remittance is made." See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 236, § 8-1/HB 170, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Transportation Funding Act of 2015.'"

Ga. L. 2015, p. 236, § 8-2/HB 170, not codified by the General Assembly, provides that: "It is the intention of the General Assembly, subject to appropriations and other constitutional obligations of this state, that year to year revenue increases be prioritized to fund education, transportation, and health care in this state."

Ga. L. 2015, p. 236, § 9-1(b)/HB 170, not codified by the General Assembly, provides that: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of this Act." This Act became effective July 1, 2015.

48-8-72. Over-collected sales or use tax.

JUDICIAL DECISIONS

Cited in Ga. Power Co. v. Cazier, 321 Ga. App. 576, 740 S.E.2d 458 (2013).

48-8-75. Purchaser's immunity from liability for failure to pay correct sales tax under certain circumstances.

(a) A purchaser shall be relieved from liability for penalty for having failed to pay the correct amount of sales or use tax if:

(1) A purchaser's seller or certified service provider relied on erroneous data provided by this state on tax rates, boundaries, taxing jurisdiction assignments, or in the taxability matrix completed by this state;

(2) A purchaser holding a direct pay permit relied on erroneous data provided by this state on tax rates, boundaries, taxing jurisdiction assignments, or in the taxability matrix completed by this state;

(3) A purchaser relied on erroneous data provided by this state in the taxability matrix completed by this state; or

(4) A purchaser using data bases provided by this state relied on erroneous data provided by this state on tax rates, boundaries, or taxing jurisdiction assignments.

(b) A purchaser shall be relieved from liability for tax and interest for having failed to pay the correct amount of sales or use tax in the

circumstances described in subsection (a) of this Code section provided that, with respect to reliance on the taxability matrix completed by this state, such relief is limited to the state's erroneous classification in the taxability matrix of terms included in the Library of Definitions as "taxable" or "exempt," "included in sales price," or "excluded from sales price" or "included in the definition" or "excluded from the definition." (Code 1981, § 48-8-75, enacted by Ga. L. 2010, p. 662, § 18/HB 1221; Ga. L. 2014, p. 866, § 48/SB 340.)

The 2014 amendment, effective April 29, 2014, part of an Act to revise, modernize, and correct the Code, revised spacing in paragraph (a)(4).

ARTICLE 2

JOINT COUNTY AND MUNICIPAL SALES AND USE TAX

48-8-80. "Qualified municipality" defined.

JUDICIAL DECISIONS

2010 amendment to O.C.G.A. § 48-8-89(d)(4) violates separation of powers doctrine. — Georgia Supreme Court is not invalidating the tax and not striking the Local Option Sales Tax Act, O.C.G.A. § 48-8-80 et seq., or the statute's terms for how the tax may be levied or for what purposes the proceeds may be applied; rather, the Court is striking only the 2010 amendment, O.C.G.A. § 48-8-89(d)(4), which effectively grants judicial resolution of the allocation and distribution of tax proceeds, a process that the Court deems to be a clear violation of the separation of powers doctrine. Turner County v. City of Ashburn, 293 Ga. 739, 749 S.E.2d 685 (2013).

48-8-82. Authorization of counties and municipalities to impose joint sales and use tax; rate; applicability to sales of motor fuels and food and beverages.

(a) When the imposition of a joint county and municipal sales and use tax is authorized according to the procedures provided in this article within a special district, the county whose geographical boundary is conterminous with that of the special district and each qualified municipality located wholly or partially within the special district shall levy a joint sales and use tax at the rate of 1 percent, except as provided in subsection (b) of this Code section. Except as to rate, the joint tax shall correspond to the tax imposed and administered by Article 1 of this chapter. No item or transaction which is not subject to taxation by Article 1 of this chapter shall be subject to the tax levied pursuant to this article, except that the joint tax provided in this article shall be applicable to sales of motor fuels as prepaid local tax as that term is defined in Code Section 48-8-2 and shall be applicable to the sale of food

and food ingredients and alcoholic beverages only to the extent provided for in paragraph (57) of Code Section 48-8-3.

(b) On or after July 1, 2015, such joint sales and use tax levied on sales of motor fuels as defined in Code Section 48-9-2 shall be at the rate of 1 percent of the retail sales price of the motor fuel which is not more than $3.00 per gallon; provided, however, that in any consolidated government levying a joint sales and use tax at 2 percent pursuant to Code Section 48-8-96, on or after July 1, 2015, any such joint sales and use tax levied on sales of motor fuels as defined in Code Section 48-9-2 shall be at the rate of 2 percent of the retail sales price of the motor fuel which is not more than $3.00 per gallon. (Ga. L. 1975, p. 984, § 2; Code 1933, § 91A-4602, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 446, §§ 1, 2; Ga. L. 1989, p. 62, § 10; Ga. L. 1991, p. 87, § 3; Ga. L. 1996, p. 1, § 2; Ga. L. 2007, p. 309, § 4/HB 219; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2010, p. 662, § 19/HB 1221; Ga. L. 2015, p. 236, § 5-8/HB 170; Ga. L. 2015, p. 1443, § 1/HB 106.)

The 2015 amendment, effective July 1, 2015, designated the existing provisions as subsection (a); added ", except as provided in subsection (b) of this Code section" at the end of the first sentence of subsection (a); and added subsection (b).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2015, the amendment of this Code section by Ga. L. 2015, p. 236, § 5-8/HB 170, was treated as impliedly repealed and superseded by Ga. L. 2015, p. 1443, § 1/HB 106, due to irreconcilable conflict.

Editor's notes. — Ga. L. 2015, p. 236, § 8-1/HB 170, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Transportation Funding Act of 2015.'"

Ga. L. 2015, p. 236, § 8-2/HB 170, not codified by the General Assembly, provides that: "It is the intention of the General Assembly, subject to appropriations and other constitutional obligations of this state, that year to year revenue increases be prioritized to fund education, transportation, and health care in this state."

Ga. L. 2015, p. 236, § 9-1(b)/HB 170, not codified by the General Assembly, provides that: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of this Act." This Act became effective July 1, 2015.

48-8-83.1. Levying and collection of joint tax to be continued.

Notwithstanding any distribution certificate filing deadline otherwise required under Code Section 48-8-89, for each special district in which the tax provided for by Code Section 48-8-82 was levied and collected immediately prior to June 4, 2010, such tax shall continue to be levied and collected; and the most recent distribution certificate which was executed on behalf of the county and on behalf of one or more qualified municipalities within the special district whose combined population within the special district is at least one-half of the combined total population of all qualified municipalities located within the special district and which was filed with the commissioner between

June 4, 2010, and October 18, 2013, shall be valid and shall continue in force and effect until superseded by a subsequent distribution certificate properly executed and filed with the commissioner in accordance with Code Section 48-8-89 or Code Section 48-8-89.1, as applicable, or until such tax is subsequently discontinued and terminated pursuant to subsection (c) of Code Section 48-8-89 or pursuant to a referendum under Code Section 48-8-92. (Code 1981, § 48-8-83.1, enacted by Ga. L. 2014, p. 840, § 1/HB 719.)

Effective date. — This Code section became effective April 29, 2014.

48-8-89. Distribution and use of proceeds; certificate specifying percentage of proceeds for each political subdivision; determination of proceeds for absent municipalities; procedure for filing certificates; effect of failure to file; renegotiation of certificate.

(a) The proceeds of the tax collected by the commissioner in each special district under this article shall be disbursed as soon as practicable after collection as follows:

(1) One percent of the amount collected shall be paid into the general fund of the state treasury in order to defray the costs of administration; and

(2) Except for the percentage provided in paragraph (1) of this subsection, the remaining proceeds of the tax shall be distributed to the governing authority of each qualified municipality within the special district and to the governing authority of the county whose geographical boundary is conterminous with that of the special district for the purpose of assisting such political subdivisions in funding all or any portion of those services which are to be provided by such governing authorities pursuant to and in accordance with Article IX, Section II, Paragraph III of the Constitution of this state.

(b) It is the intent of the General Assembly that no agreement as to the distribution of the proceeds of the tax shall enrich any political subdivision beyond a sum which in the absence of the distribution would be raised through other sources of revenue. The distribution shall be in accordance with a certificate which shall be executed in behalf of each respective governing authority, except as otherwise provided in this subsection, and which shall encompass all respective political subdivisions, shall be filed with the commissioner, and shall specify by percentage that portion of the remaining proceeds of the tax available for distribution which each such political subdivision shall receive. On or after July 1, 1995, the distribution of proceeds of the tax as specified in the certificate shall be based upon, but not be limited to, the following criteria:

(1) The service delivery responsibilities of each political subdivision to the population served by the political jurisdiction and served during normal business hours, conventions, trade shows, athletic events and the inherent value to a community of a central business district and the unincorporated areas of the county and the obligation of all residents of the county for the maintenance and prosperity of the central business district and the unincorporated areas of the county;

(2) The service delivery responsibilities of each political subdivision to the resident population of the subdivision;

(3) The existing service delivery responsibility of each political subdivision;

(4) The effect of a change in sales tax distribution on the ability of each political subdivision to meet its short-term and long-term debt;

(5) The point of sale and use which generates the tax to be apportioned;

(6) The existence of intergovernmental agreements among and between the political subdivisions;

(7) The use by any political subdivision of property taxes and other revenues from some taxpayers to subsidize the cost of services provided to other taxpayers of the levying subdivision; and

(8) Any coordinated plan of county and municipal service delivery and financing.

Notwithstanding the fact that a certificate shall not contain an execution in behalf of one or more qualified municipalities within the special district, if the combined total of the populations of all such absent municipalities is less than one-half of the aggregate population of all qualified municipalities located within the special district, the submitting political subdivisions shall, in behalf of the absent municipalities, specify a percentage of that portion of the remaining proceeds which each such municipality shall receive, which percentage shall not be less than that proportion which each absent municipality's population bears to the total population of all qualified municipalities within the special district multiplied by that portion of the remaining proceeds which are received by all qualified municipalities within the special district. For the purpose of determining the population of the absent municipalities, only that portion of the population of each such municipality which is located within the special district shall be computed. No certificate may contain a total of specified percentages in excess of 100 percent. The certificate shall be filed with the commissioner by March 1, 1980, for those special districts in which the tax authorized by this article is being levied on January 1, 1980. For all other special districts in which

the tax shall be imposed subsequent to January 1, 1980, the certificate shall be filed with the commissioner within 60 days after the tax is imposed within the district. The commissioner shall continue to distribute the proceeds of the tax as otherwise provided in this Code section until the first day of the next calendar year following the month in which the commissioner receives a certificate as provided in this Code section, which certificate shall provide other percentages upon which the commissioner shall make the distribution to the political subdivisions entitled to the proceeds of the tax. At such time, the commissioner shall thereafter distribute the proceeds of the tax in accordance with the directions of the certificate.

(c) If the certificate provided for in subsection (b) of this Code section is not received by the commissioner by the required date, the authority to impose the tax authorized by Code Section 48-8-82 shall cease on the first day of the second calendar month following the month in which the tax was initially imposed and the tax shall not be levied in the special district after such date unless the reimposition of the tax is subsequently authorized pursuant to Code Section 48-8-85. When the imposition of the tax is so terminated, the commissioner shall retain the proceeds of the tax which were to be distributed to the governing authorities of the county and qualified municipalities within the special district until he receives a certificate in behalf of each such governing authority specifying the percentage of the proceeds which each such governing authority shall receive. If no such certificate is received by the commissioner within 120 days of the date on which the authority to levy the tax was terminated, the proceeds shall escheat to the state and the commissioner shall transfer the proceeds to the state's general fund.

(d)(1) A certificate providing for the distribution of the proceeds of the tax authorized by this article shall expire on December 31 of the second year following the year in which the decennial census is conducted. No later than December 30 of the second year following the year in which the census is conducted, a new distribution certificate meeting the requirements for certificates specified by subsection (b) of this Code section shall be filed with and received by the commissioner. The General Assembly recognizes that the requirement for government services is not always in direct correlation with population. Although a new distribution certificate is required within a time certain of the decennial census, this requirement is not meant to convey an intent by the General Assembly that population as a criterion should be more heavily weighted than other criteria. It is the express intent of the General Assembly in requiring such renegotiation that eligible political subdivisions shall analyze local service delivery responsibilities and the existing allocation of proceeds made available to such governments under the provisions of this article and make rational the allocation of such resources to meet

such service delivery responsibilities. Political subdivisions in their renegotiation of such distributions shall at a minimum consider the criteria specified in subsection (b) of this Code section.

(2) The commissioner shall be notified in writing of the commencement of renegotiation proceedings by the county governing authority on behalf of all eligible political subdivisions within the special district. The eligible political subdivisions shall commence renegotiations at the call of the county governing authority before July 1 of the second year following the year in which the census is conducted. If the county governing authority does not issue the call by that date, any eligible municipality may issue the call and so notify the commissioner and all eligible political subdivisions within the special district.

(3) Following the commencement of such renegotiation, if the parties necessary to an agreement fail to reach an agreement within 60 days, such parties shall submit the dispute to nonbinding arbitration, mediation, or such other means of resolving conflicts in a manner which attempts to reach a resolution of the dispute. Any renegotiation agreement reached pursuant to this paragraph shall be in accordance with the requirements specified in paragraph (1) of this subsection.

(4) Reserved.

(5) If a new distribution certificate as provided for in this Code section is not received by the commissioner, the authority to impose the tax authorized by Code Section 48-8-82 shall cease, and the tax shall not be levied in the special district after such date unless the reimposition of the tax is subsequently authorized pursuant to Code Section 48-8-85. When the imposition of the tax is so terminated, the commissioner shall retain the proceeds of the tax which were to be distributed to the governing authorities of the county and qualified municipalities within the special district until the commissioner receives a certificate on behalf of each such governing authority specifying the percentage of the proceeds which each such governing authority shall receive. If no such certificate is received by the commissioner within 120 days of the date on which the authority to levy the tax was terminated, the proceeds shall escheat to the state, and the commissioner shall transfer the proceeds to the state's general fund.

(6) If the commissioner receives a new distribution certificate by the required date, the commissioner shall distribute the proceeds of the tax in accordance with the directions of the new distribution certificate commencing on January 1 of the year immediately following the year in which such certificate was executed by the parties or

the judge or the first day of the second calendar month following the month such certificate was executed by the parties or the judge, whichever is sooner.

(7) Costs of any conflict resolution under paragraph (3) or (4) of this subsection shall be borne proportionately by the affected political subdivisions in accordance with the final percentage distributions of the proceeds of the tax as reflected by the new distribution certificate.

(8) Political subdivisions shall be authorized, at their option, to renegotiate distribution certificates on a more frequent basis than is otherwise required under this subsection.

(9) No provision of this subsection shall apply to any county which is authorized to levy or which levies a local sales tax, local use tax, or local sales and use tax for educational purposes pursuant to a local constitutional amendment or to any county which is authorized to expend all or any portion of the proceeds of any sales tax, use tax, or sales and use tax for educational purposes pursuant to a local constitutional amendment. (Ga. L. 1975, p. 984, § 2; Ga. L. 1976, p. 1019, § 2; Code 1933, § 91A-4606, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 446, § 1; Code 1933, § 91A-4608, enacted by Ga. L. 1979, p. 446, § 2; Ga. L. 1983, p. 3, § 64; Ga. L. 1994, p. 1816, §§ 1, 2; Ga. L. 2010, p. 958, § 1/HB 991; Ga. L. 2014, p. 840, § 2/HB 719; Ga. L. 2014, p. 866, § 48/SB 340.)

The 2014 amendments. — The first 2014 amendment, effective April 29, 2014, substituted "Reserved" for the former provisions of paragraph (d)(4), which read: "(A) If the parties necessary to an agreement fail to reach an agreement within 60 days of submitting the dispute to nonbinding arbitration, mediation, or such other means of resolving conflicts, as required by paragraph (3) of this subsection, any of such parties may file a petition in superior court of the county seeking resolution of the items remaining in dispute. Such petition shall be filed no later than 30 days after the last day of the 60 day alternative dispute resolution period required by paragraph (3) of this subsection. Such petition shall be assigned to a judge pursuant to Code Section 15-1-9.1 or 15-6-13 who is not a judge in the circuit in which the county is located. The judge selected may also be a senior judge pursuant to Code Section 15-1-9.2 who resides in another circuit.

"(B) Following the filing of the petition as specified under subparagraph (A) of this paragraph, the county and qualified municipalities representing at least one-half of the aggregate municipal population of all qualified municipalities located wholly or partially within the special district shall separately submit to the judge and the other parties a written best and final offer specifying the distribution of the tax proceeds. There shall be one such offer from the county and one such offer from qualified municipalities representing at least one-half of the aggregate municipal population of all qualified municipalities located wholly or partially within the special district. The offer from the county may be an offer representing the county and any qualified municipalities that are not represented in the offer from the qualified municipalities representing at least one-half of the aggregate municipal population of all qualified municipalities located wholly or partially within the special district.

"(C) Any qualified municipality or municipalities located wholly or partially within the special district who are not a

party to an offer under subparagraph (B) of this paragraph, and who represent at least one-half of the aggregate municipal population of all qualified municipalities who are not a party to an offer under subparagraph (B) of this paragraph, shall be authorized to separately submit to the judge and the other parties a written best and final offer specifying the distribution of the tax proceeds. There shall be one such offer from such qualified municipality or municipalities.

"(D) Each offer under subparagraphs (B) and (C) of this paragraph shall take into account the allocation required for any absent municipalities in accordance with subsection (b) of this Code section. The judge shall conduct such hearings as the judge deems necessary and shall render a decision based on the requirements and intent of paragraph (1) of this subsection and the criteria in subsection (b) of this Code section. The judge's decision shall adopt the best and final offer of one of the parties submitted under subparagraphs (B) and (C) of this paragraph specifying the allocation of the tax proceeds and shall also include findings of fact. The judge shall enter a final order containing a new distribution certificate and transmit a copy of it to the commissioner.

"(E) A final order entered under subparagraph (D) of this paragraph shall be subject to appeal by application upon one or more of the following grounds:

"(i) The judge's disregard of the law;

"(ii) Partiality of the judge; or

"(iii) Corruption, fraud, or misconduct by the judge or a party.

"(F) During the process set forth in this paragraph, the commissioner shall continue to distribute the sales tax proceeds according to the percentages specified in the most recently filed distribution certificate or in accordance with subsection (f) of Code Section 48-8-89.1, as applicable, until a new distribution certificate is properly filed." The second 2014 amendment, effective April 29, 2014, part of an Act to revise, modernize, and correct the Code, added "and" at the end of paragraph (a)(1).

Law reviews. — For annual survey on local government law, see 66 Mercer L. Rev. 135 (2014).

JUDICIAL DECISIONS

2010 amendment to O.C.G.A. § 48-8-89(d)(4) violates separation of powers doctrine. — To the extent the 2010 amendment to the Local Option Sales Tax Act (LOST), O.C.G.A. § 48-8-89(d)(4), permits judicial resolution of the issue of whether LOST should be renewed and the governing bodies of the special district should be required to levy and collect the tax, the amendment violates the separation of powers doctrine of Ga. Const. 1983, Art. I, Sec II, Para. III. Turner County v. City of Ashburn, 293 Ga. 739, 749 S.E.2d 685 (2013).

Georgia Supreme Court is not invalidating the tax and not striking the Local Option Sales Tax Act, O.C.G.A. § 48-8-80 et seq., or the statute's terms for how the tax may be levied or for what purposes the proceeds may be applied; rather, the Court is striking only the 2010 amendment, O.C.G.A. § 48-8-89(d)(4), which effectively grants judicial resolution of the allocation and distribution of tax proceeds, a process that the Court deems to be a clear violation of the separation of powers doctrine. Turner County v. City of Ashburn, 293 Ga. 739, 749 S.E.2d 685 (2013).

Trial court erred when the court denied a county's motion to dismiss and sustained the constitutionality of the 2010 amendment to the Local Option Sales Tax Act (LOST), O.C.G.A. § 48-8-89(d)(4), because the 2010 amendment, which effectively grants judicial resolution of the allocation and distribution of tax proceeds, was deemed to be a clear violation of the separation of powers doctrine by the Georgia Supreme Court. Turner County v. City of Ashburn, 293 Ga. 739, 749 S.E.2d 685 (2013).

ARTICLE 2A

HOMESTEAD OPTION SALES AND USE TAX (HOST)

PART 1

HOMESTEAD OPTION SALES AND USE TAX

48-8-100. Short title.

This part shall be known and may be cited as the "Homestead Option Sales and Use Tax Act." (Code 1981, § 48-8-100, enacted by Ga. L. 1995, p. 655, § 1; Ga. L. 2015, p. 217, § 2/HB 215.)

The 2015 amendment, effective May 4, 2015, substituted "part" for "article" in this Code section.

48-8-101. Definitions.

As used in this part, the term:

(1) "Ad valorem taxes for county purposes" means any and all ad valorem taxes for county maintenance and operation purposes levied by, for, or on behalf of the county, excluding taxes to retire general obligation bonded indebtedness of the county.

(2) "Existing municipality" means a municipality created prior to January 1, 2007, lying wholly within or partially within a county.

(3) "Homestead" means homestead as defined and qualified in Code Section 48-5-40, with the additional qualification that it shall include only the primary residence and not more than five contiguous acres of land immediately surrounding such residence.

(4) "Qualified municipality" means a municipality created on or after January 1, 2007, lying wholly within or partially within a county. (Code 1981, § 48-8-101, enacted by Ga. L. 1995, p. 655, § 1; Ga. L. 1997, p. 1, § 1; Ga. L. 2007, p. 598, § 1/HB 264; Ga. L. 2015, p. 217, § 2/HB 215.)

The 2015 amendment, effective May 4, 2015, substituted "part" for "article" in the introductory paragraph of this Code section.

48-8-101.1. Equal distribution of homestead option sales and use tax among counties and municipalities.

It is the intent of the General Assembly that the proceeds of the homestead option sales and use tax be distributed equitably to the

counties and qualified municipalities such that the residents of a new incorporated municipality will continue to receive a benefit from that tax substantially equal to the benefit they would have received if the area covered by the municipality had not incorporated. The provisions of this part shall be liberally construed to effectuate such intent. (Code 1981, § 48-8-101.1, enacted by Ga. L. 2007, p. 598, § 2/HB 264; Ga. L. 2015, p. 217, § 2/HB 215.)

The 2015 amendment, effective May 4, 2015, substituted "part" for "article" in the last sentence of this Code section.

48-8-102. Creation of special districts; levying of tax; use of proceeds of tax; restriction on levying taxes.

(a) Pursuant to the authority granted by Article IX, Section II, Paragraph VI of the Constitution of this state, there are created within this state 159 special districts. The geographical boundary of each county shall correspond with and shall be conterminous with the geographical boundary of one of the 159 special districts.

(b)(1) When the imposition of a local sales and use tax is authorized according to the procedures provided in this part within a special district, the county whose geographical boundary is conterminous with that of the special district shall levy a local sales and use tax at the rate of 1 percent, except as provided in paragraph (2) of this subsection. Except as to rate, the local sales and use tax shall correspond to the tax imposed and administered by Article 1 of this chapter. No item or transaction which is not subject to taxation by Article 1 of this chapter shall be subject to the sales and use tax levied pursuant to this part, except that the sales and use tax provided in this part shall be applicable to sales of motor fuels as prepaid local tax as such term is defined in Code Section 48-8-2 and shall be applicable to the sale of food and food ingredients and alcoholic beverages only to the extent provided for in paragraph (57) of Code Section 48-8-3.

(2) On or after July 1, 2015, such sales and use tax levied on sales of motor fuels as defined in Code Section 48-9-2 shall be at the rate of 1 percent of the retail sales price of the motor fuel which is not more than $3.00 per gallon.

(c)(1) Except as otherwise provided in paragraph (2) of this subsection, the proceeds of the sales and use tax levied and collected under this part shall be used only for the purposes of funding capital outlay projects and of funding services within a special district equal to the revenue lost to the homestead exemption as provided in Code Section 48-8-104 and, in the event excess funds remain following the expen-

diture for such purposes, such excess funds shall be expended as provided in subparagraph (c)(2)(C) of Code Section 48-8-104.

(2) Prior to January 1 of the year immediately following the first complete calendar year in which the sales and use tax under this part is imposed, such proceeds may be used for funding all or any portion of those services which are to be provided by the governing authority of the county whose geographic boundary is conterminous with that of the special district pursuant to and in accordance with Article IX, Section II, Paragraph III of the Constitution of this state.

(d) Such sales and use tax shall only be levied in a special district following the enactment of a local Act which provides for a homestead exemption of an amount to be determined from the amount of sales and use tax collected under this part. Such exemption shall commence with taxable years beginning on or after January 1 of the year immediately following the first complete calendar year in which the sales and use tax under this part is levied. Any such local Act shall incorporate by reference the terms and conditions specified under this part. Any such local Act shall not be subject to the provisions of Code Section 1-3-4.1. Any such homestead exemption under this part shall be in addition to and not in lieu of any other homestead exemption applicable to county taxes for county purposes within the special district. Notwithstanding any provision of such local Act to the contrary, the referendum which shall otherwise be required to be conducted under such local Act shall only be conducted if the resolution required under subsection (a) of Code Section 48-8-103 is adopted prior to the issuance of the call for the referendum under the local Act by the election superintendent. If such ordinance is not adopted by that date, the referendum otherwise required to be conducted under the local Act shall not be conducted.

(e) No sales and use tax shall be levied in a special district under this part in which a tax is levied and collected under Article 2 of this chapter. (Code 1981, § 48-8-102, enacted by Ga. L. 1995, p. 655, § 1; Ga. L. 1996, p. 1, § 3; Ga. L. 1997, p. 1, § 2; Ga. L. 1997, p. 157, § 1A; Ga. L. 2007, p. 309, § 6/HB 219; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2010, p. 662, § 22/HB 1221; Ga. L. 2015, p. 217, § 2/HB 215; Ga. L. 2015, p. 236, § 5-9/HB 170.)

The 2015 amendments. — The first 2015 amendment, effective May 4, 2015, substituted "part" for "article" in subsection (b), in paragraphs (c)(1) and (c)(2), and in subsections (d) and (e); and in subsection (b), substituted "such term" for "that term" in the middle of the last sentence. The second 2015 amendment, effective July 1, 2015, in subsection (b), designated the existing provisions as paragraph (b)(1), added ", except as provided in paragraph (2) of this subsection" at the end of the first sentence of paragraph (b)(1), and added paragraph (b)(2). See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 236, § 8-1/HB 170, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Transportation Funding Act of 2015.'"

Ga. L. 2015, p. 236, § 8-2/HB 170, not codified by the General Assembly, provides that: "It is the intention of the General Assembly, subject to appropriations and other constitutional obligations of this state, that year to year revenue increases be prioritized to fund education, transportation, and health care in this state."

Ga. L. 2015, p. 236, § 9-1(b)/HB 170, not codified by the General Assembly, provides that: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of this Act." This Act became effective July 1, 2015.

48-8-103. Submission to voters to determine imposition of tax.

(a) Whenever the governing authority of any county whose geographic boundary is conterminous with that of the special district wishes to submit to the electors of the special district the question of whether the sales and use tax authorized by Code Section 48-8-102 shall be imposed, any such governing authority shall notify the election superintendent of the county whose geographical boundary is conterminous with that of the special district by forwarding to the superintendent a copy of a resolution of the governing authority calling for a referendum election. Upon receipt of the resolution, it shall be the duty of the election superintendent to issue the call for an election for the purpose of submitting the question of the imposition of the sales and use tax to the voters of the special district for approval or rejection. The election superintendent shall issue the call and shall conduct the election on a date and in the manner authorized under Code Section 21-2-540. Such election shall only be conducted on the date of and in conjunction with a referendum provided for by local Act on the question of whether to impose a homestead exemption within such county and based on the amount of proceeds from the sales and use tax levied and collected pursuant to this part. The election superintendent shall cause the date and purpose of the election to be published once a week for two weeks immediately preceding the date of the election in the official organ of such county. The ballot shall have written or printed thereon the following statement which shall precede the ballot question specified in this subsection and the ballot question specified by the required local Act:

> "NOTICE TO ELECTORS: Unless **BOTH** the homestead exemption **AND** the retail homestead option sales and use tax are approved, then neither the exemption nor the sales and use tax shall become effective."

Such statement shall be followed by the following:

> "( ) YES Shall a retail homestead option sales and use tax
> of 1 percent be levied within the special
> ( ) NO district within _____ County for the
> purposes of funding capital outlay projects and of

> funding services to replace revenue lost to an additional homestead exemption of up to 100 percent of the assessed value of homesteads from county taxes for county purposes?"

Notwithstanding any other provision of law to the contrary, the statement, ballot question, and local Act ballot question referred to in this subsection shall precede any and all other ballot questions calling for the levy or imposition of any other sales and use tax which are to appear on the same ballot.

(b) All persons desiring to vote in favor of levying the sales and use tax shall vote "Yes," and those persons opposed to levying the tax shall vote "No." If more than one-half of the votes cast are in favor of levying the tax and approving the local Act providing such homestead exemption, then the tax shall be levied in accordance with this part; otherwise, the sales and use tax may not be levied, and the question of the imposition of the sales and use tax may not again be submitted to the voters of the special district until after 24 months immediately following the month in which the election was held. It shall be the duty of the election superintendent to hold and conduct such elections under the same rules and regulations as govern special elections. It shall be the superintendent's further duty to canvass the returns, declare the result of the election, and certify the result to the Secretary of State and to the commissioner. The expense of the election shall be borne by the county whose geographical boundary is conterminous with that of the special district holding the election.

(c) If the imposition of the sales and use tax provided in Code Section 48-8-102 is approved in a referendum election as provided by subsections (a) and (b) of this Code section, the governing authority of the county whose geographical boundary is conterminous with that of the special district shall adopt a resolution during the first 30 days following the certification of the result of the election imposing the sales and use tax authorized by Code Section 48-8-102 on behalf of the county whose geographical boundary is conterminous with that of the special district. The resolution shall be effective on the first day of the next succeeding calendar quarter which begins more than 80 days after the adoption of the resolution. With respect to services which are billed on a regular monthly basis, however, the resolution shall become effective with the first regular billing period coinciding with or following the otherwise effective date of the resolution. A certified copy of the resolution shall be forwarded to the commissioner so that it will be received within five days after its adoption. (Code 1981, § 48-8-103, enacted by Ga. L. 1995, p. 655, § 1; Ga. L. 1997, p. 1, § 3; Ga. L. 2015, p. 217, § 2/HB 215.)

The 2015 amendment, effective May 4, 2015, substituted "part" for "article" at the end of the fourth sentence in the introductory paragraph of subsection (a) and in the second sentence of subsection (b).

48-8-104. Exclusive administration of tax by commissioner; identification of location where tax collected; manner of disbursement of proceeds.

(a) The sales and use tax levied pursuant to this part shall be exclusively administered and collected by the commissioner for the use and benefit of each county whose geographical boundary is conterminous with that of a special district. Such administration and collection shall be accomplished in the same manner and subject to the same applicable provisions, procedures, and penalties provided in Article 1 of this chapter except that the sales and use tax provided in this part shall be applicable to sales of motor fuels as prepaid local tax as such term is defined in Code Section 48-8-2; provided, however, that all moneys collected from each taxpayer by the commissioner shall be applied first to such taxpayer's liability for taxes owed the state. Dealers shall be allowed a percentage of the amount of the sales and use tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting, and paying the amount due if such amount is not delinquent at the time of payment. The deduction shall be at the rate and subject to the requirements specified under subsections (b) through (f) of Code Section 48-8-50.

(b) Each sales and use tax return remitting sales and use taxes collected under this part shall separately identify the location of each retail establishment at which any of the sales and use taxes remitted were collected and shall specify the amount of sales and the amount of taxes collected at each establishment for the period covered by the return in order to facilitate the determination by the commissioner that all sales and use taxes imposed by this part are collected and distributed according to situs of sale.

(c) The proceeds of the sales and use tax collected by the commissioner in each special district under this part shall be disbursed as soon as practicable after collection as follows:

(1) One percent of the amount collected shall be paid into the general fund of the state treasury in order to defray the costs of administration;

(2) Except for the percentage provided in paragraph (1) of this subsection and the amount determined under subsections (d) and (e) of this Code section, the remaining proceeds of the sales and use tax shall be distributed to the governing authority of the county whose geographical boundary is conterminous with that of the special

district; provided, however, that a county and any qualified municipality shall be authorized by intergovernmental agreement to waive the equalization amount otherwise required under subsections (d) and (e) of this Code section and provide for a different distribution amount. In the event of such waiver, except for the percentage provided in paragraph (1) of this subsection, the remaining proceeds of the sales and use tax shall be distributed to the governing authority of the county whose geographical boundary is conterminous with that of the special district. As a condition precedent for the authority to levy the sales and use tax or to collect any proceeds from the tax authorized by this part for the year following the first complete calendar year in which it is levied and for all subsequent years except the year following the year in which the sales and use tax is terminated under Code Section 48-8-106, the county whose geographical boundary is conterminous with that of the special district shall, except as otherwise provided in subsection (c) of Code Section 48-8-102, expend such proceeds as follows:

(A) A portion of such proceeds shall be expended for the purpose of funding capital outlay projects as follows:

(i) The governing authority of the county whose geographical boundary is conterminous with that of the special district shall establish the capital factor which shall not exceed .200 and, for a county in which a qualified municipality is located, shall not be less than the level required by subsection (d) of this Code section; therefore, at a minimum, the county shall set the capital factor at a level that yields an amount of capital outlay proceeds that is equal to or greater than the sum of all equalization amounts due qualified municipalities and existing municipalities under subsection (e) of this Code section; and

(ii) Capital outlay projects shall be funded in an amount equal to the product of the capital factor multiplied by the net amount of the sales and use tax proceeds collected under this part during the previous calendar year, and this amount shall be referred to as capital outlay proceeds in subsections (d) and (e) of this Code section;

(B) A portion of such proceeds shall be expended for the purpose of funding services within the special district equal to the revenue lost to the homestead exemption as provided in this Code section as follows:

(i) The homestead factor shall be calculated by multiplying the quantity 1.000 minus the capital factor times an amount equal to the net amount of sales and use tax collected in the special district pursuant to this part for the previous calendar

year, and then dividing by the taxes levied for county purposes on only that portion of the county tax digest that represents net assessments on qualified homestead property after all other homestead exemptions have been applied, rounding the result to three decimal places;

(ii) If the homestead factor is less than or equal to 1.000, the amount of homestead exemption created under this part on qualified homestead property shall be equal to the product of the homestead factor multiplied times the net assessment of each qualified homestead remaining after all other homestead exemptions have been applied; and

(iii) If the homestead factor is greater than 1.000, the homestead exemption created by this part on qualified homestead property shall be equal to the net assessment of each homestead remaining after all other homestead exemptions have been applied; and

(C) If any of such proceeds remain following the distribution provided for in subparagraphs (A) and (B) of this paragraph and subsections (d) and (e) of this Code section:

(i) The millage rate levied for county purposes shall be rolled back in an amount equal to such excess divided by the net taxable digest for county purposes after deducting all homestead exemptions including the exemption under this part; and

(ii) In the event the rollback created by division (i) of this subparagraph exceeds the millage rate for county purposes, the governing authority of the county whose boundary is coterminous with the special district shall be authorized to expend the surplus funds for funding all or any portion of those services which are to be provided by such governing authorities pursuant to and in accordance with Article IX, Section II, Paragraph III of the Constitution of this state.

(d)(1) The commissioner shall distribute to the governing authority of each qualified municipality located in the special district a share of the capital outlay proceeds calculated as provided in this subsection and subsection (e) of this Code section which proceeds shall be expended for the purpose of funding capital outlay projects of such municipality.

(2) Both the tax commissioner and the governing authority for the county in which a qualified municipality is located shall cooperate with and assist the commissioner in the calculation of the equalization amounts under subsection (e) of this Code section and shall, on or before July 1 of each year, provide to the commissioner and the

governing authority of each qualified municipality written certification of the following:

(A) The capital factor set by the county for the current calendar year; provided, however, that the capital factor may not exceed 0.200;

(B) The total amount, if any, due to be paid to existing municipalities from the capital outlay proceeds as required by any intergovernmental agreement between the county and such municipalities;

(C) The incorporated county millage rate in each qualified municipality;

(D) The net homestead digest for each qualified municipality;

(E) The total homestead digest; and

(F) The unincorporated county millage rate.

If the tax commissioner and the governing authority of the county fail to provide such certification on or before July 1, the commissioner shall not distribute to such county any additional proceeds of the sales and use tax collected after July 1 unless and until such certification is provided.

(3) The commissioner shall then calculate the equalization amount due each qualified municipality based on the certifications provided by the tax commissioner and the governing authority of the county and pay such amount to the governing authority of each qualified municipality in six equal monthly payments as soon as practicable during or after each of the last six months of the current calendar year. In the event an existing municipality that has entered into an intergovernmental agreement with a county at any time before January 1, 2007, to receive capital outlay proceeds of the homestead option sales and use tax and such intergovernmental agreement has become or does become null and void for any reason, such existing municipality shall be treated under this part the same as if it were a qualified municipality as defined in paragraph (4) of Code Section 48-8-101 and therefore receive payment of equalization amounts under this part as provided for under this part. The commissioner shall distribute to the governing authority of the county each month the net sales and use tax remaining after payment of equalization amounts to the qualified municipalities.

(e)(1) As used in this subsection, the term:

(A) "Equalization amount" means for a qualified municipality the product of the equalization millage times the net homestead digest for that qualified municipality.

(B) "Equalization millage" means for each qualified municipality the product of the homestead factor calculated pursuant to division (c)(2)(B)(i) of this Code section times the difference between the unincorporated county millage rate and the incorporated county millage rate for that qualified municipality.

(C) "Incorporated county millage rate" means the millage rate for all ad valorem taxes for county purposes levied by the county in each of the qualified municipalities in the county.

(D) "Net homestead digest" means for each qualified municipality the total net assessed value of all qualified homestead property located in that portion of the qualified municipality located in the county remaining after all other homestead exemptions are applied.

(E) "Total homestead digest" means the total net assessed value of all qualified homestead property located in the county remaining after all other homestead exemptions are applied.

(F) "Unincorporated county millage rate" means the millage rate for all ad valorem taxes for county purposes levied by the county in the unincorporated areas of the county.

(2) For illustration purposes, a hypothetical example of the calculation of the equalization amount is provided below.

First, calculate the homestead factor in accordance with division (c)(2)(B)(i) of this Code section as follows:

(A) Capital factor certified by county as required by subsection (d) of this Code section	0.150
(B) Net amount of sales and use tax collected in the special district pursuant to this part for the previous calendar year	$50 million
(C) Taxes levied for county purposes on only that portion of the county tax digest that represents net assessments on qualified homestead property after all other homestead exemptions have been applied	$100 million
(D) Calculation of homestead factor using figures above = [(1-.0150)($50 million/$100 million)]	.425

Next, calculate the equalization amount in accordance with paragraph (1) of this subsection as follows:

(E) Unincorporated county millage rate	15.0 mills
(F) Minus the incorporated county millage rate for qualified municipality "Y"	(10.0 mills)
Difference:	= 5.0 mills
(G) Times homestead factor (calculated above)	x .425
(H) Equals the equalization millage:	= 2.125 mills
(I) Times net homestead digest for qualified municipality "Y"	$200 million
(J) Equals the equalization amount payable to municipality "Y"	$425,000.00

(3) In the event the total amount payable in a calendar year to all existing municipalities as certified by the county pursuant to subparagraph (d)(2)(B) of this Code section plus the total equalization amount payable to all qualified municipalities in the special district exceeds the capital outlay proceeds calculated based on a maximum capital factor of 0.200, the commissioner shall pay to the governing authority of each qualified municipality a share of such proceeds calculated as follows:

(A) Determine the capital outlay proceeds based on a maximum capital factor of 0.200;

(B) Subtract the amount certified by the county as payable to existing municipalities pursuant to subparagraph (d)(2)(B) of this Code section;

(C) The remaining amount equals the portion of the capital outlay proceeds that may be used by the commissioner to pay equalization amounts to qualified municipalities.

The commissioner shall calculate each qualified municipality's share of such remaining amount by dividing the net homestead digest for each qualified municipality by the total homestead digest for all municipalities.

(4) In the event the incorporated county millage rate for a qualified municipality is greater than the unincorporated county millage rate, no payment shall be due from the governing authority of the qualified municipality to the governing authority of the county.

(5) In the event the amount of capital outlay proceeds exceeds the sum of the equalization amounts due all qualified municipalities plus the total amount certified under subparagraph (d)(2)(B) of this Code section as due all existing municipalities, the commissioner shall distribute to each qualified municipality a portion of such excess

equal to the net homestead digest for such municipality divided by the total homestead digest.

(6) If any qualified municipality is located partially in the county then only that portion so located shall be considered in the calculations contained in this subsection. (Code 1981, § 48-8-104, enacted by Ga. L. 1995, p. 655, § 1; Ga. L. 1997, p. 1, § 4; Ga. L. 2007, p. 309, § 7/HB 219; Ga. L. 2007, p. 598, § 3/HB 264; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2010, p. 662, § 23/HB 1221; Ga. L. 2015, p. 217, § 2/HB 215.)

The 2015 amendment, effective May 4, 2015, substituted "part" for "article" throughout this Code section, and substituted "such term" for "that term" in the second sentence of subsection (a).

48-8-105. Credit of tax against similar taxes collected in other jurisdictions on same property.

Where a local sales or use tax has been paid with respect to tangible personal property by the purchaser either in another local tax jurisdiction within this state or in a tax jurisdiction outside this state, the sales and use tax may be credited against the sales and use tax authorized to be imposed by this part upon the same property. If the amount of sales or use tax so paid is less than the amount of the use tax due under this part, the purchaser shall pay an amount equal to the difference between the amount paid in the other tax jurisdiction and the amount due under this part. The commissioner may require such proof of payment in another local tax jurisdiction as the commissioner deems necessary and proper. No credit shall be granted, however, against the sales and use tax imposed under this part for tax paid in another jurisdiction if the sales and use tax paid in such other jurisdiction is used to obtain a credit against any other local sales and use tax levied in the special district or in the county which is conterminous with the special district; and sales and use taxes so paid in another jurisdiction shall be credited first against the sales and use tax levied under this part and then against the sales and use tax levied under Article 3 of this chapter, if applicable. (Code 1981, § 48-8-105, enacted by Ga. L. 1995, p. 655, § 1; Ga. L. 2015, p. 217, § 2/HB 215.)

The 2015 amendment, effective May 4, 2015, substituted "part" for "article" in five places in this Code section and substituted "this state" for "the state" in two places in the first sentence.

48-8-106. Submission to voters of question as to whether to discontinue tax.

(a) Whenever the governing authority of any county whose geographic boundary is conterminous with that of the special district in

which the sales and use tax authorized by this part is being levied wishes to submit to the electors of the special district the question of whether the sales and use tax authorized by Code Section 48-8-102 shall be discontinued, the governing authority shall notify the election superintendent of the county whose geographical boundary is conterminous with that of the special district by forwarding to the superintendent a copy of a resolution of the governing authority calling for the referendum election. Upon receipt of the resolution, it shall be the duty of the election superintendent to issue the call for an election for the purpose of submitting the question of discontinuing the levy of the sales and use tax to the voters of the special district for approval or rejection. The election superintendent shall issue the call and shall conduct the election on a date and in the manner authorized under Code Section 21-2-540. Such election shall be conducted only on the date of and in conjunction with a referendum provided for by local Act on the question of whether to repeal the homestead exemption within such county which is funded from the proceeds of the sales and use tax levied and collected pursuant to this part. The election superintendent shall cause the date and purpose of the election to be published once a week for two weeks immediately preceding the date of the election in the official organ of such county. The ballot shall have written or printed thereon the following:

"( ) YES Shall the 1 percent retail homestead option sales
( ) NO and use tax being levied within the special district within _____ County for the purposes of funding capital outlay projects and of funding services to replace revenue lost to an additional homestead exemption of up to 100 percent of the assessed value of homesteads from county taxes for county purposes be terminated?"

(b) All persons desiring to vote in favor of discontinuing the sales and use tax shall vote "Yes," and those persons opposed to discontinuing the tax shall vote "No." If more than one-half of the votes cast are in favor of discontinuing the sales and use tax and repealing the local Act providing for such homestead exemption, then the sales and use tax shall cease to be levied on the last day of the taxable year following the taxable year in which the commissioner receives the certification of the result of the election; otherwise, the sales and use tax shall continue to be levied, and the question of the discontinuing of the tax may not again be submitted to the voters of the special district until after 24 months immediately following the month in which the election was held. It shall be the duty of the election superintendent to hold and conduct such elections under the same rules and regulations as govern special elections. It shall be the superintendent's further duty to canvass the returns, declare and certify the result of the election, and certify the

result to the Secretary of State and to the commissioner. The expense of the election shall be borne by the county whose geographical boundary is conterminous with that of the special district holding the election. (Code 1981, § 48-8-106, enacted by Ga. L. 1995, p. 655, § 1; Ga. L. 1997, p. 1, § 5; Ga. L. 2015, p. 217, § 2/HB 215.)

The 2015 amendment, effective May 4, 2015, in subsection (a), substituted "part" for "article" in the first and fourth sentences, and substituted "shall be conducted only" for "shall only be conducted" in the fourth sentence.

48-8-107. Property ordered by and delivered to purchaser at point outside geographical area of special district in which tax imposed.

No sales and use tax provided for in Code Section 48-8-102 shall be imposed upon the sale of tangible personal property which is ordered by and delivered to the purchaser at a point outside the geographical area of the special district in which the sales and use tax is imposed under this part regardless of the point at which title passes, if the delivery is made by the seller's vehicle, United States mail, or common carrier or by private or contract carrier licensed by the Federal Motor Carrier Safety Administration or the Georgia Department of Public Safety. (Code 1981, § 48-8-107, enacted by Ga. L. 1995, p. 655, § 1; Ga. L. 2012, p. 580, § 20/HB 865; Ga. L. 2015, p. 217, § 2/HB 215.)

The 2015 amendment, effective May 4, 2015, substituted "part" for "article" in this Code section.

48-8-108. Taxation of building and construction materials.

(a) As used in this Code section, the term "building and construction materials" means all building and construction materials, supplies, fixtures, or equipment, any combination of such items, and any other leased or purchased articles when the materials, supplies, fixtures, equipment, or articles are to be utilized or consumed during construction or are to be incorporated into construction work pursuant to a bona fide written construction contract.

(b) No sales and use tax provided for in Code Section 48-8-102 shall be imposed in a special district upon the sale or use of building and construction materials when the contract pursuant to which the materials are purchased or used was advertised for bid prior to approval of the levy of the sales and use tax by the county whose geographical boundary is conterminous with that of the special district and the contract was entered into as a result of a bid actually submitted in response to the advertisement prior to approval of the levy of the sales and use tax. (Code 1981, § 48-8-108, enacted by Ga. L. 1995, p. 655, § 1; Ga. L. 2015, p. 217, § 2/HB 215.)

The 2015 amendment, effective May 4, 2014, substituted "a special district" for "such special district" near the beginning of subsection (b).

48-8-109. Rules and regulations.

The commissioner shall have the power and authority to promulgate such rules and regulations as shall be necessary for the effective and efficient administration and enforcement of the collection of the sales and use tax authorized to be imposed by this part. (Code 1981, § 48-8-109, enacted by Ga. L. 1995, p. 655, § 1; Ga. L. 2015, p. 217, § 2/HB 215.)

The 2015 amendment, effective May 4, 2015, substituted "part" for "article" at the end of this Code section.

Part 2

Equalized Homestead Option Sales Tax

Effective date. — The part became effective May 4, 2015.

48-8-109.1. Short title.

This part shall be known and may be cited as the "Equalized Homestead Option Sales Tax Act of 2015." (Code 1981, § 48-8-109.1, enacted by Ga. L. 2015, p. 217, § 2/HB 215.)

48-8-109.2. Referendum on suspension of taxation.

In any county where a homestead option sales and use tax under Part 1 of this article and a sales tax for purposes of a metropolitan area system of public transportation, as authorized by the amendment to the Constitution set out at Georgia Laws, 1964, page 1008; the continuation of such amendment under Article XI, Section I, Paragraph IV(d) of the Constitution; and the laws enacted pursuant to such constitutional amendment, are being levied, the county governing authority may choose to submit to the electors of the special district the question of whether to suspend the sales and use tax authorized by Code Section 48-8-102 and replace such tax with a sales and use tax authorized by this part. Such referendum shall only be held in conjunction with a referendum submitting to the electors of the special district the question of whether to approve a special purpose local option sales and use tax pursuant to the provisions of Part 1 of Article 3 of this chapter. The electors of the special district must approve both of the sales and use taxes in order for either of them to be implemented. If either of the sales and use taxes is not approved by the electors, the homestead

option sales and use tax under Part 1 of this article shall be continued in full force and effect. (Code 1981, § 48-8-109.2, enacted by Ga. L. 2015, p. 217, § 2/HB 215.)

48-8-109.3. Creation of special districts; application of tax.

(a) Pursuant to the authority granted by Article IX, Section II, Paragraph VI of the Constitution of this state, there are created within this state 159 special districts. The geographical boundary of each county shall correspond with and shall be conterminous with the geographical boundary of one of the 159 special districts.

(b) When the imposition of a local sales and use tax is authorized according to the procedures provided in this part within a special district, the county whose geographical boundary is conterminous with that of the special district shall levy a local sales and use tax at the same rate as provided in Part 1 of this article. Except as otherwise provided in this part, the local sales and use tax shall correspond to the tax imposed and administered by Part 1 of this article. The local sales and use tax levied pursuant to this part shall apply to all items and transactions subject to taxation pursuant to Part 1 of this article. No item or transaction which is not subject to taxation pursuant to Part 1 of this article shall be subject to the tax levied pursuant to this part.

(c) No sales and use tax shall be levied in a special district under this part in which a tax is levied and collected under Article 2 of this chapter. (Code 1981, § 48-8-109.3, enacted by Ga. L. 2015, p. 217, § 2/HB 215.)

48-8-109.4. Role of election superintendent.

(a) Whenever the governing authority of any county whose geographic boundary is conterminous with that of the special district wishes to submit to the electors of the special district the question of whether the sales and use tax authorized by this part shall be imposed, any such governing authority shall notify the election superintendent of the county whose geographical boundary is conterminous with that of the special district by forwarding to the superintendent a copy of a resolution of the governing authority calling for a referendum election. Upon receipt of the resolution, it shall be the duty of the election superintendent to issue the call for an election for the purpose of submitting the question of the imposition of the sales and use tax to the voters of the special district for approval or rejection. The election superintendent shall issue the call and shall conduct the election on a date and in the manner authorized under Code Section 21-2-540. Such election shall only be held in conjunction with a referendum submitting to the electors of the special district the question of whether to approve a special purpose local option sales and use tax pursuant to the

provisions of Part 1 of Article 3 of this chapter. The electors of the special district must approve both of the sales and use taxes in order for either of them to be implemented. If either of the taxes is not approved by the electors, the homestead option sales and use tax under Part 1 of this article shall be continued in full force and effect. If the sales and use tax under Part 1 of Article 3 of this chapter is not renewed, the sales and use tax under Part 1 of this article shall replace the sales and use tax under this part upon expiration of the sales and use tax under Part 1 of Article 3 of this chapter. The election superintendent shall cause the date and purpose of the election to be published once a week for two weeks immediately preceding the date of the election in the official organ of such county. The ballot shall have written or printed thereon the following statement which shall precede the ballot question specified in this subsection:

"NOTICE TO ELECTORS: Unless **BOTH** the equalized homestead option sales and use tax **AND** the special purpose local option sales and use tax are approved, then neither sales and use tax shall become effective."

Such statement shall be followed by the following:

"( ) YES Shall an equalized homestead option sales and use tax be levied and the regular
( ) NO homestead option sales and use tax be suspended within the special district within _____ County for the purposes of reducing the ad valorem property tax millage rates levied by county and municipal governments on homestead properties?"

Notwithstanding any other provision of law to the contrary, the statement and ballot question referred to in this subsection shall precede any and all other ballot questions which are to appear on the same ballot.

(b) All persons desiring to vote in favor of levying the sales and use tax shall vote "Yes," and those persons opposed to levying the tax shall vote "No." If more than one-half of the votes cast are in favor of levying the tax, then the tax shall be levied in accordance with this part; otherwise, the sales and use tax may not be levied, and the question of the imposition of the sales and use tax may not again be submitted to the voters of the special district until after 24 months immediately following the month in which the election was held. It shall be the duty of the election superintendent to hold and conduct such elections under the same rules and regulations as govern special elections. It shall be the superintendent's further duty to canvass the returns, declare the result of the election, and certify the result to the Secretary of State and

to the commissioner. The expense of the election shall be borne by the county whose geographical boundary is conterminous with that of the special district holding the election.

(c) If the imposition of the sales and use tax provided in this part is approved in a referendum election as provided by subsections (a) and (b) of this Code section, the governing authority of the county whose geographical boundary is conterminous with that of the special district shall adopt a resolution during the first 30 days following the certification of the result of the election imposing the sales and use tax authorized in this part on behalf of the county whose geographical boundary is conterminous with that of the special district. The resolution shall be effective on the first day of the next succeeding calendar quarter which begins more than 80 days after the adoption of the resolution. With respect to services which are billed on a regular monthly basis, however, the resolution shall become effective with the first regular billing period coinciding with or following the otherwise effective date of the resolution. A certified copy of the resolution shall be forwarded to the commissioner so that it will be received within five days after its adoption. (Code 1981, § 48-8-109.4, enacted by Ga. L. 2015, p. 217, § 2/HB 215.)

48-8-109.5. Administration and collection of tax; disbursement of tax.

(a) The sales and use tax levied pursuant to this part shall be exclusively administered and collected by the commissioner for the use and benefit of each county whose geographical boundary is conterminous with that of a special district. Such administration and collection shall be accomplished in the same manner and subject to the same applicable provisions, procedures, and penalties provided in Article 1 of this chapter except that the sales and use tax provided in this part shall be applicable to sales of motor fuels as prepaid local tax as such term is defined in Code Section 48-8-2, to the same extent that sales of motor fuels are subject to taxation pursuant to Part 1 of this article; provided, however, that all moneys collected from each taxpayer by the commissioner shall be applied first to such taxpayer's liability for taxes owed the state. Dealers shall be allowed a percentage of the amount of the sales and use tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting, and paying the amount due if such amount is not delinquent at the time of payment. The deduction shall be at the rate and subject to the requirements specified under subsections (b) through (f) of Code Section 48-8-50.

(b) Each sales and use tax return remitting sales and use taxes collected under this part shall separately identify the location of each retail establishment at which any of the sales and use taxes remitted

were collected and shall specify the amount of sales and the amount of taxes collected at each establishment for the period covered by the return in order to facilitate the determination by the commissioner that all sales and use taxes imposed by this part are collected and distributed according to situs of sale.

(c) The proceeds of the sales and use tax collected by the commissioner in each special district under this part shall be disbursed as soon as practicable after collection as follows:

(1) One percent of the amount collected shall be paid into the general fund of the state treasury in order to defray the costs of administration; and

(2) The remaining proceeds shall be disbursed to the governing authority of the county whose geographical boundary is conterminous with that of the special district, and each municipality located wholly or partially therein, and shall be utilized as follows:

(A) First, the proceeds shall be used to roll back, and eliminate if possible, the millage rates for any county ad valorem property tax line items levied uniformly throughout the county on homestead properties, including in all municipalities; and

(B) Next, any remaining proceeds shall be used to roll back at an equal and uniform rate across both of the following categories, and eliminate if possible:

(i) The millage rates for any county ad valorem property tax line items levied only in unincorporated portions of the county on homestead properties; and

(ii) The millage rates for any municipal ad valorem property tax line items levied in every municipality located wholly or partially in the county on homestead properties but not in unincorporated portions of the county.

If any municipality is located partially in the special district, then only that portion so located shall be considered in the calculations contained in this subsection.

(d) The form to collect ad valorem tax prepared by the county tax commissioner shall reflect the full amount owed by the taxpayer pursuant to the millage rates set by the county governing authority and any municipal governing authority. Under a separate heading, the form shall reflect the deductions from the gross ad valorem tax amount realized through the application of proceeds from the equalized homestead option sales and use tax.

(e) Notwithstanding any provision of law to the contrary except subsection (f) of this Code section, in any county levying a tax under

this part, a tax levied pursuant to the provisions of Part 1 of Article 3 of this chapter in a special district in such county shall be strictly divided between the unincorporated portions of the county whose geographical boundary is conterminous with that of the special district and the municipalities wholly or partially located within the special district on a per capita basis, based on the most recent decennial census, unless altered by an intergovernmental agreement between the county and all municipalities wholly located within the special district. For as long as a municipality located within the special district and incorporated after May 4, 2015, does not maintain the roads, streets, sidewalks, and bicycle paths within its territorial boundaries and relies upon the county governing authority for such maintenance, such municipality's per capita share of the proceeds of the tax levied pursuant to Part 1 of Article 3 of this chapter shall be paid to the county governing authority. Notwithstanding any provision of law to the contrary, the department shall disburse directly to the county and each municipality its share of the proceeds of the tax levied pursuant to Part 1 of Article 3 of this chapter.

(f) The tax levied in the special district under Part 1 of Article 3 of this chapter shall not be levied within the boundaries of any municipality wholly or partially located within the special district that is levying a tax pursuant to Article 4 of this chapter. No proceeds from the tax levied in the special district under Part 1 of Article 3 of this chapter shall be disbursed to any such municipality. Upon the expiration of the tax levied under Article 4 of this chapter in such municipality, the tax in the special district under Part 1 of Article 3 of this chapter shall be levied within such municipality and proceeds shall be disbursed to such municipality in accordance with this part. (Code 1981, § 48-8-109.5, enacted by Ga. L. 2015, p. 217, § 2/HB 215.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2015, "May 4, 2015," was substituted for "the effective date of this Code Section" in the second sentence in subsection (e).

48-8-109.6. Taxation from other jurisdiction; calculations.

Where a local sales or use tax has been paid with respect to tangible personal property by the purchaser either in another local tax jurisdiction within this state or in a tax jurisdiction outside this state, the sales and use tax may be credited against the sales and use tax authorized to be imposed by this part upon the same property. If the amount of sales or use tax so paid is less than the amount of the use tax due under this part, the purchaser shall pay an amount equal to the difference between the amount paid in the other tax jurisdiction and the amount due under this part. The commissioner may require such proof of payment in another local tax jurisdiction as the commissioner deems necessary and proper. No credit shall be granted, however, against the

sales and use tax imposed under this part for tax paid in another jurisdiction if the sales and use tax paid in such other jurisdiction is used to obtain a credit against any other local sales and use tax levied in the special district or in the county which is conterminous with the special district; and sales and use taxes so paid in another jurisdiction shall be credited first against the sales and use tax levied under this part and then against the sales and use tax levied under Article 3 of this chapter, if applicable. (Code 1981, § 48-8-109.6, enacted by Ga. L. 2015, p. 217, § 2/HB 215.)

48-8-109.7. Referendum on discontinuation of taxation; ballot.

(a) Whenever the governing authority of any county whose geographic boundary is conterminous with that of the special district in which the sales and use tax authorized by this part is being levied wishes to submit to the electors of the special district the question of whether the sales and use tax authorized by this part shall be discontinued, the governing authority shall notify the election superintendent of the county whose geographical boundary is conterminous with that of the special district by forwarding to the superintendent a copy of a resolution of the governing authority calling for the referendum election. Upon receipt of the resolution, it shall be the duty of the election superintendent to issue the call for an election for the purpose of submitting the question of discontinuing the levy of the sales and use tax to the voters of the special district for approval or rejection. The election superintendent shall issue the call and shall conduct the election on a date and in the manner authorized under Code Section 21-2-540. Such election shall be conducted only on the date of and in conjunction with an election to repeal the special purpose local option sales and use tax pursuant to the provisions of Part 1 of Article 3 of this chapter. If either such sales and use tax is repealed, then both such sales and use taxes shall be repealed and the sales and use tax under Part 1 of this article shall replace the sales and use tax that was imposed under this part. The election superintendent shall cause the date and purpose of the election to be published once a week for two weeks immediately preceding the date of the election in the official organ of such county. The ballot shall have written or printed thereon the following:

"( ) YES Shall the equalized homestead option sales and use tax being levied within the
( ) NO special district within _____ County for the purposes of reducing the ad valorem property tax millage rates levied by county and municipal governments on homestead properties be terminated?"

(b) All persons desiring to vote in favor of discontinuing the sales and use tax shall vote "Yes," and those persons opposed to discontinuing the tax shall vote "No." If more than one-half of the votes cast are in favor of discontinuing the sales and use tax, then the sales and use tax shall cease to be levied on the last day of the taxable year following the taxable year in which the commissioner receives the certification of the result of the election; otherwise, the sales and use tax shall continue to be levied, and the question of discontinuing the tax may not again be submitted to the voters of the special district until after 24 months immediately following the month in which the election was held. It shall be the duty of the election superintendent to hold and conduct such elections under the same rules and regulations as govern special elections. It shall be the superintendent's further duty to canvass the returns, declare and certify the result of the election, and certify the result to the Secretary of State and to the commissioner. The expense of the election shall be borne by the county whose geographical boundary is conterminous with that of the special district holding the election. (Code 1981, § 48-8-109.7, enacted by Ga. L. 2015, p. 217, § 2/HB 215.)

48-8-109.8. Sales outside of jurisdiction.

No sales and use tax provided for in this part shall be imposed upon the sale of tangible personal property which is ordered by and delivered to the purchaser at a point outside the geographical area of the special district in which the sales and use tax is imposed under this part regardless of the point at which title passes, if the delivery is made by the seller's vehicle, United States mail, or common carrier or by private or contract carrier licensed by the Federal Motor Carrier Safety Administration or the Georgia Department of Public Safety. (Code 1981, § 48-8-109.8, enacted by Ga. L. 2015, p. 217, § 2/HB 215.)

48-8-109.9. "Building and construction materials" defined; exemption.

(a) As used in this Code section, the term "building and construction materials" means all building and construction materials, supplies, fixtures, or equipment, any combination of such items, and any other leased or purchased articles when the materials, supplies, fixtures, equipment, or articles are to be utilized or consumed during construction or are to be incorporated into construction work pursuant to a bona fide written construction contract.

(b) No sales and use tax provided for in this part shall be imposed in a special district upon the sale or use of building and construction materials when the contract pursuant to which the materials are purchased or used was advertised for bid prior to approval of the levy of

the sales and use tax by the county whose geographical boundary is conterminous with that of the special district and the contract was entered into as a result of a bid actually submitted in response to the advertisement prior to approval of the levy of the sales and use tax. (Code 1981, § 48-8-109.9, enacted by Ga. L. 2015, p. 217, § 2/HB 215.)

48-8-109.10. Regulatory authority of commissioner.

The commissioner shall have the power and authority to promulgate such rules and regulations as shall be necessary for the effective and efficient administration and enforcement of the collection of the sales and use tax authorized to be imposed by this part. (Code 1981, § 48-8-109.10, enacted by Ga. L. 2015, p. 217, § 2/HB 215.)

ARTICLE 3

COUNTY SALES AND USE TAXES

PART 1

COUNTY SPECIAL PURPOSE LOCAL OPTION SALES TAX (SPLOST)

48-8-110. Definitions.

JUDICIAL DECISIONS

Cited in Turner County v. City of Ashburn, 293 Ga. 739, 749 S.E.2d 685 (2013).

48-8-110.1. Authorization for county special purpose local option sales tax; subjects of taxation; applicability to sales of motor fuels and food and beverages.

(a) Pursuant to the authority granted by Article IX, Section II, Paragraph VI of the Constitution of this state, there are created within this state 159 special districts. The geographical boundary of each county shall correspond with and shall be conterminous with the geographical boundary of the 159 special districts.

(b) When the imposition of a special district sales and use tax is authorized according to the procedures provided in this part within a special district, the governing authority of any county in this state may, subject to the requirement of referendum approval and the other requirements of this part, impose within the special district a special sales and use tax for a limited period of time which tax shall be known as the county special purpose local option sales tax.

(c) Except as provided in subsection (d) of this Code section, any tax imposed under this part shall be at the rate of 1 percent. Except as to rate, a tax imposed under this part shall correspond to the tax imposed by Article 1 of this chapter. No item or transaction which is not subject to taxation under Article 1 of this chapter shall be subject to a tax imposed under this part, except that a tax imposed under this part shall apply to sales of motor fuels as prepaid local tax as that term is defined in Code Section 48-8-2 and shall be applicable to the sale of food and food ingredients and alcoholic beverages as provided for in Code Section 48-8-3.

(d) On or after July 1, 2015, such sales and use tax levied on sales of motor fuels as defined in Code Section 48-9-2 shall be at the rate of 1 percent of the retail sales price of the motor fuel which is not more than $3.00 per gallon. (Code 1981, § 48-8-110, enacted by Ga. L. 1985, p. 232, § 1; Ga. L. 1989, p. 62, § 11; Ga. L. 1991, p. 87, § 4; Ga. L. 1996, p. 1, § 4; Code 1981, § 48-8-110.1, as redesignated by Ga. L. 2004, p. 69, § 8; Ga. L. 2007, p. 309, § 8/HB 219; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2010, p. 662, § 24/HB 1221; Ga. L. 2015, p. 236, § 5-10/HB 170.)

The 2015 amendment, effective July 1, 2015, substituted "Except as provided in subsection (d) of this Code section, any" for "Any" at the beginning of the first sentence of subsection (c), and added subsection (d). See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 236, § 8-1/HB 170, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Transportation Funding Act of 2015.'"

Ga. L. 2015, p. 236, § 8-2/HB 170, not codified by the General Assembly, provides that: "It is the intention of the General Assembly, subject to appropriations and other constitutional obligations of this state, that year to year revenue increases be prioritized to fund education, transportation, and health care in this state."

Ga. L. 2015, p. 236, § 9-1(b)/HB 170, not codified by the General Assembly, provides that: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of this Act." This Act became effective July 1, 2015.

48-8-111. Procedure for imposition of tax; resolution or ordinance; notice to county election superintendent; election.

(a) Prior to the issuance of the call for the referendum and prior to the vote of a county governing authority within a special district to impose the tax under this part, such governing authority may enter into an intergovernmental agreement with any or all of the qualified municipalities within the special district. Any county that desires to have a tax under this part levied within the special district shall deliver or mail a written notice to the mayor or chief elected official in each qualified municipality located within the special district. Such notice shall contain the date, time, place, and purpose of a meeting at which

the governing authorities of the county and of each qualified municipality are to meet to discuss the possible projects for inclusion in the referendum, including municipally owned or operated projects. The notice shall be delivered or mailed at least ten days prior to the date of the meeting. The meeting shall be held at least 30 days prior to the issuance of the call for the referendum. Following such meeting, the governing authority of the county within the special district voting to impose the tax authorized by this part shall notify the county election superintendent by forwarding to the superintendent a copy of the resolution or ordinance of the governing authority calling for the imposition of the tax. Such ordinance or resolution shall specify eligible expenditures identified by the county and any qualified municipality for use of proceeds distributed pursuant to subsection (b) of Code Section 48-8-115. Such ordinance or resolution shall also specify:

(1) The purpose or purposes for which the proceeds of the tax are to be used and may be expended, which purpose or purposes may consist of capital outlay projects located within or outside, or both within and outside, any incorporated areas in the county in the special district or outside the county, as authorized by subparagraph (B) of this paragraph for regional facilities, and which may include any of the following purposes:

(A) A capital outlay project consisting of road, street, and bridge purposes, which purposes may include sidewalks and bicycle paths;

(B) A capital outlay project or projects in the special district and consisting of a courthouse; administrative buildings; a civic center; a local or regional jail, correctional institution, or other detention facility; a library; a coliseum; local or regional solid waste handling facilities as defined under paragraph (27.1) or (35) of Code Section 12-8-22, as amended, excluding any solid waste thermal treatment technology facility, including, but not limited to, any facility for purposes of incineration or waste to energy direct conversion; local or regional recovered materials processing facilities as defined under paragraph (26) of Code Section 12-8-22, as amended; or any combination of such projects;

(C) A capital outlay project or projects which will be operated by a joint authority or authorities of the county and one or more qualified municipalities within the special district;

(D) A capital outlay project or projects, to be owned or operated or both either by the county, one or more qualified municipalities within the special district, one or more local authorities within the special district, or any combination thereof;

(E) A capital outlay project consisting of a cultural facility, a recreational facility, or a historic facility or a facility for some combination of such purposes;

(F) A water capital outlay project, a sewer capital outlay project, a water and sewer capital outlay project, or a combination of such projects, to be owned or operated or both by a county water and sewer district and one or more qualified municipalities in the county;

(G) The retirement of previously incurred general obligation debt of the county, one or more qualified municipalities within the special district, or any combination thereof;

(H) A capital outlay project or projects within the special district and consisting of public safety facilities, airport facilities, or related capital equipment used in the operation of public safety or airport facilities, or any combination of such purposes;

(I) A capital outlay project or projects within the special district, consisting of capital equipment for use in voting in official elections or referendums;

(J) A capital outlay project or projects within the special district consisting of any transportation facility designed for the transportation of people or goods, including but not limited to railroads, port and harbor facilities, mass transportation facilities, or any combination thereof;

(K) A capital outlay project or projects within the special district and consisting of a hospital or hospital facilities that are owned by a county, a qualified municipality, or a hospital authority within the special district and operated by such county, municipality, or hospital authority or by an organization which is tax exempt under Section 501(c)(3) of the Internal Revenue Code, which operates the hospital through a contract or lease with such county, municipality, or hospital authority;

(L) The repair of capital outlay projects, including, but not limited to, roads, streets, and bridges, located, in part or in whole, within the special district that have been damaged or destroyed by a natural disaster;

(M) A capital outlay project or projects that are owned, operated, or administered by the state and located, in part or in whole, within the special district; or

(N) Any combination of two or more of the foregoing;

(2) The maximum period of time, to be stated in calendar years or calendar quarters and not to exceed five years, unless the provisions of paragraph (1) of subsection (b) or subparagraph (b)(2)(A) of Code Section 48-8-115 are applicable, in which case the maximum period of time for which the tax may be levied shall not exceed six years;

(3) The estimated cost of the project or projects which will be funded from the proceeds of the tax, which estimated cost shall also be the estimated amount of net proceeds to be raised by the tax, unless the provisions of paragraph (1) of subsection (b) or subparagraph (b)(2)(A) of Code Section 48-8-115 are applicable, in which case the final day of the tax shall be based upon the length of time for which the tax was authorized to be levied by the referendum; and

(4) If general obligation debt is to be issued in conjunction with the imposition of the tax, the principal amount of the debt to be issued, the purpose for which the debt is to be issued, the local government issuing the debt, the interest rate or rates or the maximum interest rate or rates which such debt is to bear, and the amount of principal to be paid in each year during the life of the debt.

(b) Upon receipt of the resolution or ordinance, the election superintendent shall issue the call for an election for the purpose of submitting the question of the imposition of the tax to the voters of the county within the special district. The election superintendent shall issue the call and shall conduct the election on a date and in the manner authorized under Code Section 21-2-540. The election superintendent shall cause the date and purpose of the election to be published once a week for four weeks immediately preceding the date of the election in the official organ of the county. If general obligation debt is to be issued by the county or any qualified municipality within the special district in conjunction with the imposition of the tax, the notice published by the election superintendent shall also include, in such form as may be specified by the county governing authority or the governing authority or authorities of the qualified municipalities imposing the tax within the special district, the principal amount of the debt, the purpose for which the debt is to be issued, the rate or rates of interest or the maximum rate or rates of interest the debt will bear, and the amount of principal to be paid in each year during the life of the debt; and such publication of notice by the election superintendent shall take the place of the notice otherwise required by Code Section 36-80-11 or by subsection (b) of Code Section 36-82-1, which notice shall not be required.

(c)(1) The ballot submitting the question of the imposition of the tax authorized by this part to the voters of the county within the special district shall have written or printed thereon the following:

"( ) YES Shall a special 1 percent sales and use tax be imposed in the special district of _____ County for a period of time not
( ) NO to exceed _____ and for the raising of an estimated amount of $_____ for the purpose of _____?"

(2) If debt is to be issued, the ballot shall also have written or printed thereon, following the language specified by paragraph (1) of this subsection, the following:

"If imposition of the tax is approved by the voters, such vote shall also constitute approval of the issuance of general obligation debt of _____ in the principal amount of $_____ for the above purpose."

(d) All persons desiring to vote in favor of imposing the tax shall vote "Yes" and all persons opposed to levying the tax shall vote "No." If more than one-half of the votes cast are in favor of imposing the tax then the tax shall be imposed as provided in this part; otherwise the tax shall not be imposed and the question of imposing the tax shall not again be submitted to the voters of the county within the special district until after 12 months immediately following the month in which the election was held; provided, however, that if an election date authorized under Code Section 21-2-540 occurs during the twelfth month immediately following the month in which such election was held, the question of imposing the tax may be submitted to the voters of the county within the special district on such date. The election superintendent shall hold and conduct the election under the same rules and regulations as govern special elections. The superintendent shall canvass the returns, declare the result of the election, and certify the result to the Secretary of State and to the commissioner. The expense of the election shall be paid from county funds.

(e)(1) If the proposal includes the authority to issue general obligation debt and if more than one-half of the votes cast are in favor of the proposal, then the authority to issue such debt in accordance with Article IX, Section V, Paragraph I or Article IX, Section V, Paragraph II of the Constitution is given to the proper officers of the county or qualified municipality within the special district issuing such debt; otherwise such debt shall not be issued. If the authority to issue such debt is so approved by the voters, then such debt may be issued without further approval by the voters.

(2) If the issuance of general obligation debt is included and approved as provided in this Code section, then the governing authority of the county or qualified municipality within the special district issuing such debt may incur such debt either through the issuance and validation of general obligation bonds or through the execution of a promissory note or notes or other instrument or instruments. If such debt is incurred through the issuance of general obligation bonds, such bonds and their issuance and validation shall be subject to Articles 1 and 2 of Chapter 82 of Title 36 except as specifically provided otherwise in this part. If such debt is incurred through the execution of a promissory note or notes or other instru-

ment or instruments, no validation proceedings shall be necessary and such debt shall be subject to Code Sections 36-80-10 through 36-80-14 except as specifically provided otherwise in this part. In either event, such general obligation debt shall be payable first from the separate account in which are placed the proceeds received by the county or qualified municipality within the special district issuing such debt from the tax authorized by this part. Such general obligation debt shall, however, constitute a pledge of the full faith, credit, and taxing power of the county or qualified municipality within the special district issuing such debt; and any liability on such debt which is not satisfied from the proceeds of the tax authorized by this part shall be satisfied from the general funds of the county or qualified municipality within the special district issuing such debt. (Code 1981, § 48-8-111, enacted by Ga. L. 1985, p. 232, § 1; Ga. L. 1985, p. 868, § 1; Ga. L. 1986, p. 10, § 48; Ga. L. 1987, p. 1322, § 1; Ga. L. 1992, p. 6, § 48; Ga. L. 1992, p. 2998, § 1; Ga. L. 1994, p. 1668, §§ 1-4; Ga. L. 1995, p. 10, § 48; Ga. L. 1995, p. 172, §§ 1, 2; Ga. L. 1995, p. 288, § 1; Ga. L. 1996, p. 230, § 1; Ga. L. 1996, p. 1643, § 4; Ga. L. 1997, p. 969, § 1; Ga. L. 1997, p. 1412, § 3; Ga. L. 1998, p. 585, § 1; Ga. L. 1999, p. 781, § 1; Ga. L. 2000, p. 1375, § 1; Ga. L. 2002, p. 415, § 48; Ga. L. 2002, p. 576, § 2; Ga. L. 2004, p. 69, § 9; Ga. L. 2015, p. 200, § 1/SB 122.)

The 2015 amendment, effective July 1, 2015, in subsection (a), deleted "or" at the end of subparagraph (a)(1)(K), added subparagraphs (a)(1)(L) and (a)(1)((M), and redesignated former subparagraph (a)(1)(L) as present subparagraph (a)(1)(N).

JUDICIAL DECISIONS

Cited in City of Atlanta v. City of College Park, 292 Ga. 741, 741 S.E.2d 147 (2013).

Part 2

Sales Tax for Educational Purposes (ESPLOST)

Editor's notes. — The following local school systems are authorized to impose sales and use tax in addition to the tax authorized by this part pursuant to local Constitutional amendments: Bulloch County School System (Ga. L. 1981, p. 1931); Chattooga County School District/ Trion Independent School District (Ga. L. 1982, p. 2675; Ga. L. 1985, p. 4447; Ga. L. 1986, p. 3712); Colquitt County School System (Ga. L. 1980, p. 2127); Habersham County School District (Ga. L. 1982, p. 2566; Ga. L. 1980, p. 2280); Houston County School System (Ga. L. 1982, p. 2600); Mitchell County School District/ Pelham Independent School District (Ga. L. 1982, p. 2643); Rabun County School District (Ga. L. 1982, p. 2522); Towns County School District (Ga. L. 1982, p. 2540).

48-8-141. Manner of imposition of tax; report; rate.

(a) Except as otherwise expressly provided in Article VIII, Section VI, Paragraph IV of the Constitution of Georgia, the sales tax for educational purposes which may be levied by a board of education of a county school district or concurrently by the board of education of a county school district and the board of education of each independent school district located within such county shall be imposed and levied by such board or boards of education and collected by the commissioner on behalf of such board or boards of education in the same manner as provided for under Part 1 of this article and the provisions of Part 1 of this article in particular, but without limitation, the provisions regarding the authority of the commissioner to administer and collect this tax, retain the 1 percent administrative fee, and promulgate rules and regulations governing this tax shall apply equally to such board or boards of education. The report required pursuant to Code Section 48-8-122 shall be applicable; provided, however, that in addition to posting such report in a newspaper of general circulation as required by such Code section, such report may be posted on the searchable website provided for under Code Section 50-6-32.

(b) On or after July 1, 2015, such sales and use tax levied on sales of motor fuels as defined in Code Section 48-9-2 shall be at the rate of 1 percent of the retail sales price of the motor fuel which is not more than $3.00 per gallon. (Code 1981, § 48-8-141, enacted by Ga. L. 1996, p. 1643, § 5; Ga. L. 1997, p. 157, §§ 2, 3; Ga. L. 2010, p. 906, § 1/HB 1013; Ga. L. 2015, p. 236, § 5-11/HB 170.)

The 2015 amendment, effective July 1, 2015, designated the existing provisions as subsection (a) and added subsection (b). See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 236, § 8-1/HB 170, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Transportation Funding Act of 2015.'"

Ga. L. 2015, p. 236, § 8-2/HB 170, not codified by the General Assembly, provides that: "It is the intention of the General Assembly, subject to appropriations and other constitutional obligations of this state, that year to year revenue increases be prioritized to fund education, transportation, and health care in this state."

Ga. L. 2015, p. 236, § 9-1(b)/HB 170, not codified by the General Assembly, provides that: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of this Act." This Act became effective July 1, 2015.

ARTICLE 3A

UNIFORM SALES AND USE TAX ADMINISTRATION

48-8-161. Definitions.

As used in this article, the term:

(1) "Agent" means a person appointed by a seller to represent the seller before the member states.

(2) "Agreement" means the Streamlined Sales and Use Tax Agreement.

(3) "Certified automated system" means software certified jointly by the states that are signatories to the agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction.

(4) "Certified service provider" means an agent certified jointly by the states that are signatories to the agreement to perform all of the seller's sales tax functions.

(5) "Model 1 seller" means a seller registered under the agreement that has selected a certified service provider as its agent to perform all the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases.

(6) "Model 2 seller" means a seller registered under the agreement that has selected a certified automated system to perform part of its sales and use tax functions, but retains responsibility for remitting the tax.

(7) "Model 3 seller" means a seller registered under the agreement that has sales in at least five member states, has total annual sales revenue of at least $500 million, has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered into a performance agreement with the member states that establishes a tax performance standard for the seller. As used in this definition, a seller includes an affiliated group of sellers using the same proprietary system.

(8) "Model 4 seller" means a seller that is not a Model 1 seller, a Model 2 seller, or a Model 3 seller.

(9) "Person" means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity.

(10) "Sales tax" means the taxes levied under this chapter.

(11) "Seller" means any person making sales, leases, or rentals of personal property or services.

(12) "State" means any state of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(13) "Use tax" means the taxes levied under this chapter. (Code 1981, § 48-8-161, enacted by Ga. L. 2004, p. 410, § 8; Ga. L. 2010, p. 662, § 26/HB 1221; Ga. L. 2013, p. 141, § 48/HB 79; Ga. L. 2014, p. 866, § 48/SB 340.)

The 2014 amendment, effective April 29, 2014, part of an Act to revise, modernize, and correct the Code, substituted "$500 million" for "$500 million dollars" in paragraph (7).

48-8-165. Benefit is to the state; no individual right to challenge or contest application.

JUDICIAL DECISIONS

Cited in Ga. Power Co. v. Cazier, 321 Ga. App. 576, 740 S.E.2d 458 (2013).

ARTICLE 4

WATER AND SEWER PROJECTS AND COSTS TAX

48-8-201. Intergovernmental contract for distribution of tax proceeds; approval of referendum by voters; cap on aggregate amount of tax; rate.

(a)(1) In any county in which the provisions of paragraph (2) of subsection (a) of Code Section 48-8-6 will be applicable if the tax under Part 1 of Article 3 of this chapter is imposed pursuant to subparagraph (a)(1)(D) of Code Section 48-8-111 in whole or in part for the purpose or purposes of a water capital outlay project or projects, a sewer capital outlay project or projects, a water and sewer capital outlay project or projects, or a combination of such projects, the governing authority of a municipality, the majority of which is located wholly or partially in such county, may deliver or mail a written copy of a resolution of such municipal governing authority calling for the imposition by the county of the tax under Part 1 of Article 3 of this chapter pursuant to subparagraph (a)(1)(D) of Code Section 48-8-111 in whole or in part for the purpose or purposes of a water capital outlay project or projects, a sewer capital outlay project or projects, a water and sewer capital outlay project or projects, water and sewer projects and costs, or any combination thereof.

(2) Within ten days following the date of delivery of such resolution to the governing authority of such county, the governing authorities

of such county and municipality may enter into an intergovernmental contract as authorized by Article IX, Section III of the Constitution which shall specify the allocation of the proceeds of the tax between such county and municipality according to the ratio the population of such municipality bears to the population of such county according to the United States decennial census of 2000 or any future such census so that such municipality's share of the total net proceeds shall be the percentage of the total population of such municipality divided by the total population of such county. Such intergovernmental contract shall specify that the proceeds allocated to the municipality shall only be expended for water and sewer projects and costs.

(3) Immediately following the entering into of the intergovernmental contract under paragraph (2) of this subsection, the governing authority of such county may select the next practicable date authorized under Code Section 21-2-540 for conducting a special election on the question of imposing such tax under Part 1 of Article 3 of this chapter. The governing authority of such county shall notify the county election superintendent by forwarding to the superintendent a copy of the resolution of the governing authority of such municipality calling for the imposition of the tax in such county. Following receipt of the resolution, the election superintendent shall issue the appropriate call for an election for the purpose of submitting the question of the imposition of the tax to the voters of such county in the manner specified in Code Section 48-8-111. If approved in such referendum, the tax shall be levied and imposed as provided in this Code section and Part 1 of Article 3 of this chapter.

(b) If the governing authority of the county takes no action under paragraph (2) or (3) of subsection (a) of this Code section, it shall provide notice thereof by resolution to the governing authority of the municipality not later than ten days following the date of delivery of such municipality's resolution to the county under subsection (a) of this Code section. Upon receipt by the governing authority of the municipality of such county resolution or if timely notice of no action is not provided by the governing authority of the county to the governing authority of the municipality or if the county referendum is conducted but is not approved by the voters, the governing authority of any municipality in this state may, subject to the requirement of referendum approval and the other requirements of this article, immediately commence proceedings to seek to impose within the municipality a special sales and use tax for a limited period of time for the purpose of funding water and sewer projects and costs. Any tax imposed under this article shall be at the rate of 1 percent. Except as otherwise provided in this article, a tax imposed under this article shall correspond to the tax imposed by Article 1 of this chapter.

(c) In the event a tax imposed under this article is imposed only by the municipality:

(1) No item or transaction which is not subject to taxation under Article 1 of this chapter shall be subject to a tax imposed under this article, except that a tax imposed under this article shall apply to:

(A) Sales of motor fuels as prepaid local tax as that term is defined in Code Section 48-8-2;

(B) The sale of food and food ingredients and alcoholic beverages as provided for in Code Section 48-8-3;

(C) The sale of natural or artificial gas used directly in the production of electricity which is subsequently sold, notwithstanding paragraph (70) of Code Section 48-8-3; and

(D) The furnishing for value to the public of any room or rooms, lodgings, or accommodations which is subject to taxation under Article 3 of Chapter 13 of this title; and

(2) A tax imposed under this article shall not apply to the sale of motor vehicles.

(d) On and after July 1, 2007, the aggregate amount of all excise taxes imposed under paragraph (5) of subsection (a) of Code Section 48-13-51 and all sales and use taxes shall not exceed 14 percent.

(e) On or after July 1, 2015, such sales and use tax levied on sales of motor fuels as defined in Code Section 48-9-2 shall be at the rate of 1 percent of the retail sales price of the motor fuel which is not more than $3.00 per gallon. (Code 1981, § 48-8-201, enacted by Ga. L. 2004, p. 69, § 7; Ga. L. 2007, p. 309, § 10/HB 219; Ga. L. 2009, p. 8, § 48/SB 46; Ga. L. 2010, p. 662, § 29/HB 1221; Ga. L. 2015, p. 236, § 5-12/HB 170.)

The 2015 amendment, effective July 1, 2015, added subsection (e). See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 236, § 8-1/HB 170, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Transportation Funding Act of 2015.'"

Ga. L. 2015, p. 236, § 8-2/HB 170, not codified by the General Assembly, provides that: "It is the intention of the General Assembly, subject to appropriations and other constitutional obligations of this state, that year to year revenue increases be prioritized to fund education, transportation, and health care in this state."

Ga. L. 2015, p. 236, § 9-1(b)/HB 170, not codified by the General Assembly, provides that: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of this Act." This Act became effective July 1, 2015.

Ga. L. 2015, p. 236, § 5-12/HB 170, purportedly changed subsection (c) but actually reenacted it without change.

ARTICLE 5

SPECIAL DISTRICT TRANSPORTATION SALES AND USE TAX (TSPLOST)

PART 1

IN GENERAL

48-8-241. Creation of special districts; tax rate.

(a) There are created within this state 12 special districts. The geographical boundary of each special district shall correspond with and shall be conterminous with the geographical boundary of the applicable region of the 12 regional commissions provided for in subsection (f) of Code Section 50-8-4.

(b) When the imposition of a special district sales and use tax is authorized according to the procedures provided in this article within a special district, subject to the requirement of referendum approval and the other requirements of this article, a special sales and use tax shall be imposed within the special district for a period of ten years which tax shall be known as the special district transportation sales and use tax.

(c) Nothing in this article shall be construed as limiting the establishment of a fund or funds which would provide at least 20 years of maintenance and operation costs from proceeds of the special district transportation sales and use tax used to construct, finance, or otherwise develop transit capital projects; provided, however, that the Metropolitan Atlanta Rapid Transit Authority, created by an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, shall not be authorized to use any proceeds from the special district transportation sales and use tax for expenses of maintenance and operation of such portions of the transportation system of such authority in existence on January 1, 2011.

(d) Except as otherwise provided in subsection (e) of this Code section, any tax imposed under this article shall be at the rate of 1 percent. Except as to rate, a tax imposed under this article shall correspond to the tax imposed by Article 1 of this chapter. No item or transaction which is not subject to taxation under Article 1 of this chapter shall be subject to a tax imposed under this article, except that a tax imposed under this article shall not apply to:

(1) The sale or use of any type of fuel used for off-road heavy-duty equipment, off-road farm or agricultural equipment, or locomotives;

(2) The sale or use of jet fuel to or by a qualifying airline at a qualifying airport;

(3) The sale or use of fuel that is used for propulsion of motor vehicles on the public highways. For purposes of this paragraph, a motor vehicle means a self-propelled vehicle designed for operation or required to be licensed for operation upon the public highways;

(4) The sale or use of energy used in the manufacturing or processing of tangible goods primarily for resale; or

(5) For motor fuel as defined under paragraph (9) of Code Section 48-9-2 for public mass transit.

The tax imposed pursuant to this article shall only be levied on the first $5,000.00 of any transaction involving the sale or lease of a motor vehicle. The tax imposed pursuant to this article shall be subject to any sales and use tax exemption which is otherwise imposed by law; provided, however, that the tax levied by this article shall be applicable to the sale of food and food ingredients as provided for in paragraph (57) of Code Section 48-8-3.

(e) Any tax imposed under this article on or after July 1, 2015, may be at a rate of up to 1 percent but shall not be more than 1 percent. Any rate less than 1 percent shall be in an increment of .05 percent. This subsection shall not apply to taxes under this article imposed or to be imposed under resolutions and ordinances adopted prior to July 1, 2015.

(f) Any tax imposed under this article on or after July 1, 2015, shall be required to expend at least 30 percent of the estimated revenue on projects included in the state-wide strategic transportation plan as defined in paragraph (6) of subsection (a) of Code Section 32-2-22. (Code 1981, § 48-8-241, enacted by Ga. L. 2010, p. 778, § 6/HB 277; Ga. L. 2013, p. 141, § 48/HB 79; Ga. L. 2015, p. 236, § 7-1/HB 170.)

The 2015 amendment, effective July 1, 2015, substituted "Except as otherwise provided in subsection (e) of this Code section, any" for "Any" at the beginning of subsection (d) and added subsections (e) and (f). See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 236, § 8-1/HB 170, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Transportation Funding Act of 2015.'"

Ga. L. 2015, p. 236, § 8-2/HB 170, not codified by the General Assembly, provides that: "It is the intention of the General Assembly, subject to appropriations and other constitutional obligations of this state, that year to year revenue increases be prioritized to fund education, transportation, and health care in this state."

Ga. L. 2015, p. 236, § 9-1(b)/HB 170, not codified by the General Assembly, provides that: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of this Act." This Act became effective July 1, 2015.

48-8-242. Definitions.

As used in this article, the term:

(1) "Commission" means the Georgia State Financing and Investment Commission;

(2) "Cost of project" means:

(A) All costs of acquisition, by purchase or otherwise, construction, assembly, installation, modification, renovation, extension, rehabilitation, operation, or maintenance incurred in connection with any project of the special district or any part thereof;

(B) All costs of real property or rights in property, fixtures, or personal property used in or in connection with or necessary for any project of the special district or for any facilities related thereto, including but not limited to the cost of all land, interests in land, estates for years, easements, rights, improvements, water rights, and connections for utility services; the cost of fees, franchises, permits, approvals, licenses, and certificates; the cost of securing any such franchises, permits, approvals, licenses, or certificates; the cost of preparation of any application therefor; and the cost of all fixtures, machinery, equipment, furniture, and other property used in or in connection with or necessary for any project of the special district;

(C) All costs of engineering, surveying, planning, environmental assessments, financial analyses, and architectural, legal, and accounting services and all expenses incurred by engineers, surveyors, planners, environmental scientists, fiscal analysts, architects, attorneys, accountants, and any other necessary technical personnel in connection with any project of the special district;

(D) All expenses for inspection of any project of the special district;

(E) All fees of any type charged to the special district in connection with any project of the special district;

(F) All expenses of or incidental to determining the feasibility or practicability of any project of the special district;

(G) All costs of plans and specifications for any project of the special district;

(H) All costs of title insurance and examinations of title with respect to any project of the special district;

(I) Repayment of any loans for the advance payment of any part of any of the foregoing costs, including interest thereon and any other expenses of such loans;

(J) Administrative expenses of the special district and such other expenses as may be necessary or incidental to any project of the special district or the financing thereof; and

(K) The establishment of a fund or funds or such other reserves as the commission may approve with respect to the financing and operation of any project of the special district.

Any cost, obligation, or expense incurred for any of the purposes specified in this paragraph shall be a part of the cost of the project of the special district and may be paid or reimbursed as otherwise authorized by this article.

(3) "County" means any county created under the Constitution or laws of this state.

(4) "Dealer" means a dealer as defined in paragraph (8) of Code Section 48-8-2.

(5) "Director" means the director of planning provided for in Code Section 32-2-43.

(6) "LARP factor" means the sum of one-fifth of the ratio between the population of a local government's jurisdiction and the total population of the special district in which such local government is located plus four-fifths of the ratio between the paved and unpaved centerline road miles in the local government's jurisdiction and the total paved and unpaved centerline road miles in the special district in which such local government is located.

(7) "Local government" means any municipal corporation, county, or consolidated government created by the General Assembly or pursuant to the Constitution and laws of this state.

(8) "Metropolitan planning organization" or "MPO" means the policy board of an organization created and designated to carry out the metropolitan transportation planning process as defined in 23 C.F.R. Section 450.

(9) "Municipal corporation" means any incorporated city or town in this state.

(10) "Project" means, without limitation, any new or existing airports, bike lanes, bridges, bus and rail mass transit systems, freight and passenger rail, pedestrian facilities, ports, roads, terminals, and all activities and structures useful and incident to providing, operating, and maintaining the same. The term shall also include direct appropriations to a local government for the purpose of serving as a local match for state or federal funding.

(11) "Regional transportation roundtable" or "roundtable" means a conference of the local governments of a special district created

pursuant to this article held at a centralized location within the district as chosen by the director for the purpose of establishing the investment criteria and determining projects eligible for the investment list for the special district. The regional transportation roundtable shall consist of the chairperson, sole commissioner, mayor, or chief executive officer of the county governing authority from each county in the special district. In the event any county in the special district has a consolidated government, the consolidated government shall elect a second elected member of the county consolidated government to the regional roundtable. In counties without a consolidated government, the second member of the regional roundtable from that county shall be one mayor elected by the mayors of the county; provided, however, that, in the event such an election ends in a tie, the mayor of the municipal corporation with the highest population determined using the most recently completed United States decennial census shall be deemed to have been elected as a representative unless that mayor is already part of the roundtable. In such case, the mayor of the municipal corporation with the second highest population shall be deemed to have been elected as a representative. If a county has more than 90 percent of its population residing in municipal corporations, such county shall have the mayor of the municipal corporation with the highest population determined using the most recently completed United States decennial census as an additional representative. The regional transportation roundtable shall elect five representatives from among its members to serve as an executive committee. The executive committee shall also include two members of the House of Representatives selected by the chairperson of the House Transportation Committee and one member of the Senate selected by the chairperson of the Senate Transportation Committee. Each member of the General Assembly appointed to the executive committee shall be a nonvoting member of the executive committee and shall represent a district which lies wholly or partially within the region represented by the executive committee. The executive committee shall not have more than one representative from any one county, but any member of the General Assembly serving on the executive committee shall not count as a representative of his or her county.

(12) Reserved.

(13) "State-wide strategic transportation plan" means the official state-wide transportation plan as defined in paragraph (6) of subsection (a) of Code Section 32-2-22.

(14) "State-wide transportation improvement program" means a state-wide prioritized listing of transportation projects as defined in paragraph (7) of subsection (a) of Code Section 32-2-22.

(15) "Transportation improvement program" means a prioritized listing of transportation projects as defined in paragraph (8) of subsection (a) of Code Section 32-2-22. (Code 1981, § 48-8-242, enacted by Ga. L. 2010 p. 778, § 6/HB 277 and Ga. L. 2010, p. 818, § 3/SB 520; Ga. L. 2015, p. 236, § 7-2/HB 170.)

The 2015 amendment, effective July 1, 2015, substituted "Reserved" for the former provisions of paragraph (12), which read: "'Special Regional Transportation Funding Election Act' means an Act specifically and exclusively enacted for the purpose of ordering that a referendum be held for the reimposition of the special district transportation sales and use tax within the region that includes the districts, in their entirety or any portion thereof, of the members from a local legislative delegation in the General Assembly. A majority of the signatures of the legislative delegation for a majority of the counties within the region shall be required for the bill to be placed upon the local calendar of each chamber. This method shall be exclusively used for this purpose and no other bill shall be placed or voted upon on the local calendar utilizing this method of qualification for placement thereon. This Act shall be treated procedurally by the General Assembly as a local Act and all counties within the region shall receive the legal notice requirements of a local Act." See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 236, § 8-1/HB 170, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Transportation Funding Act of 2015.'"

Ga. L. 2015, p. 236, § 8-2/HB 170, not codified by the General Assembly, provides that: "It is the intention of the General Assembly, subject to appropriations and other constitutional obligations of this state, that year to year revenue increases be prioritized to fund education, transportation, and health care in this state."

Ga. L. 2015, p. 236, § 9-1(b)/HB 170, not codified by the General Assembly, provides that: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of this Act." This Act became effective July 1, 2015.

Part 2

Election, Imposition, and Procedures

48-8-245. Collection of tax; cessation of tax.

(a) If the imposition of the special district transportation sales and use tax is approved at the special election, the collection of such tax shall begin on the first day of the next succeeding calendar quarter beginning more than 80 days after the date of the election. With respect to services which are regularly billed on a monthly basis, however, the tax shall become effective with respect to and the tax shall apply to services billed on or after the effective date specified in the previous sentence.

(b) The tax shall cease to be imposed on the earliest of the following dates:

(1) On the final day of the ten-year period of time specified for the imposition of the tax; or

(2) As of the end of the calendar quarter during which the state revenue commissioner determines that the tax has raised revenues sufficient to provide to the special district net proceeds equal to or greater than the amount specified as the estimated amount of net proceeds to be raised by the special district transportation tax.

(c)(1) No more than a single tax under this article may be collected at any time within a special district.

(2) Upon the adoption of resolutions by the governing bodies of a majority of the counties within a special district in which a tax authorized by this article is in effect, an election may be held for the reimposition of the tax while the tax is in effect. Proceedings for the development of an investment list and for the reimposition of a tax shall be in the same manner as provided for in Code Sections 48-8-241 and 48-8-243.

(3) Following the expiration of the special district transportation sales and use tax under this article, or following a special election in which voters in a special district rejected the imposition of the tax, upon the adoption of resolutions by the governing bodies of a majority of counties within a special district, an election may be held for the imposition of a tax under this article in the same manner as provided in this article for the initial imposition of such tax. The election superintendents shall issue the call and conduct the election in the manner authorized by general law. The development of the investment list for such special district shall follow the dates established in Code Section 48-8-243 with the years adjusted appropriately, and such schedule shall be posted on a website developed by the state revenue commissioner to be used exclusively for matters related to the special district transportation sales and use tax within 30 days of the later of the state revenue commissioner's receipt of notice from the final county governing body required to adopt a resolution. (Code 1981, § 48-8-245, enacted by Ga. L. 2010, p. 778, § 6/HB 277; Ga. L. 2015, p. 236, § 7-3/HB 170.)

The 2015 amendment, effective July 1, 2015, deleted "1 percent" preceding "tax" in paragraph (c)(1); in paragraph (c)(2), deleted "enactment by the General Assembly of a Special Regional Transportation Funding Election Act and the" following "Upon the" at the beginning of the first sentence and substituted "Code Sections 48-8-241 and 48-8-243" for "Code Section 48-8-243" at the end of the second sentence; and, in paragraph (c)(3), deleted "passage by the General Assembly of a Special Regional Transportation Funding Election Act and the" preceding "adoption of" in the middle of the first sentence, substituted the present second sentence for the former, which read: "Such subsequent election shall be held on the date of a state-wide general primary.", and deleted "or of the passage of the Special Regional Transportation Funding Election Act by the General Assembly" follow-

ing "adopt a resolution" at the end of the last sentence. See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 236, § 8-1/HB 170, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Transportation Funding Act of 2015.'"

Ga. L. 2015, p. 236, § 8-2/HB 170, not codified by the General Assembly, provides that: "It is the intention of the General Assembly, subject to appropriations and other constitutional obligations of this state, that year to year revenue increases be prioritized to fund education, transportation, and health care in this state."

Ga. L. 2015, p. 236, § 9-1(b)/HB 170, not codified by the General Assembly, provides that: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of this Act." This Act became effective July 1, 2015.

ARTICLE 5A

SPECIAL DISTRICT MASS TRANSPORTATION SALES AND USE TAX

Effective date. — This article became effective July 1, 2015.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2015, the enactment of this article by Ga. L. 2015, p. 236, § 7-5/HB 170, was treated as impliedly repealed and superseded by Ga. L. 2015, p. 1442, § 2/HB 106, due to irreconcilable conflict.

Editor's notes. — Ga. L. 2015, p. 236, § 8-1/HB 170, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Transportation Funding Act of 2015.'"

Ga. L. 2015, p. 236, § 8-2/HB 170, not codified by the General Assembly, provides that: "It is the intention of the General Assembly, subject to appropriations and other constitutional obligations of this state, that year to year revenue increases be prioritized to fund education, transportation, and health care in this state."

Ga. L. 2015, p. 236, § 9-1(b)/HB 170, not codified by the General Assembly, provides that: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of this Act." This Act became effective July 1, 2015.

48-8-260. Definitions.

As used in this article, the term:

(1) "Intergovernmental agreement" means a contract entered into pursuant to Article IX, Section III, Paragraph I of the Constitution.

(2) "Mass transportation" means any mode of transportation serving the general public which is appropriate to transport people by highways or rail.

(3) "Mass transportation regional system participant" means any county within a special district created pursuant to Article 5 of this chapter in which mass transportation service is provided within such special district, to such special district, or from such special district by a multicounty regional transportation authority created by an Act

of the General Assembly, including but not limited to the Georgia Regional Transportation Authority or the Metropolitan Atlanta Rapid Transit Authority.

(4) "Qualified municipality" means a qualified municipality as defined in paragraph (4) of Code Section 48-8-110 which is located wholly or partly within a special district.

(5) "Transportation purposes" means and includes roads, bridges, public transit, rails, airports, buses, seaports, including without limitation road, street, and bridge purposes pursuant to paragraph (1) of subsection (b) of Code Section 48-8-121, and all accompanying infrastructure and services necessary to provide access to these transportation facilities, including new general obligation debt and other multiyear obligations issued to finance such purposes. Such purposes shall also include the retirement of previously incurred general obligation debt with respect only to such purposes, but only if an intergovernmental agreement has been entered into under this article. (Code 1981, § 48-8-260, enacted by Ga. L. 2015, p. 236, § 7-5/HB 170; Ga. L. 2015, p. 1443, § 2/HB 106.)

48-8-261. Creation of special districts; imposition of taxes.

(a) Pursuant to the authority granted by Article IX, Section II, Paragraph VI of the Constitution of this state, 159 special districts are created within this state. The geographical boundary of each county shall correspond with and shall be conterminous with the geographical boundary of the 159 special districts created.

(b) On or after July 1, 2016, any county:

(1) That is not located within a special district levying a special sales and use tax pursuant to Article 5 of this chapter;

(2) That is a mass transportation regional system participant; and

(3) In which a tax is currently being levied and collected pursuant to:

(A) Part 1 of Article 3 of this chapter;

(B) A local constitutional amendment for purposes of a metropolitan area system of public transportation set out at Ga. L. 1964, p. 1008, and the laws enacted pursuant to such local constitutional amendment; or

(C) Code Section 48-8-96

may, by following the procedures required by this article, impose for a limited period of time within the special district under this article a

transportation special purpose local option sales and use tax, the proceeds of which shall be used only for transportation purposes.

(c) On or after July 1, 2017, any county:

(1) That is not located within a special district levying a special sales and use tax pursuant to Article 5 of this chapter; and

(2) In which a tax is currently being levied and collected pursuant to:

(A) Part 1 of Article 3 of this chapter;

(B) A local constitutional amendment for purposes of a metropolitan area system of public transportation set out at Ga. L. 1964, p. 1008, and the laws enacted pursuant to such local constitutional amendment; or

(C) Code Section 48-8-96

may, by following the procedures required by this article, impose for a limited period of time within the special district under this article a transportation special purpose local option sales and use tax, the proceeds of which shall be used only for transportation purposes. (Code 1981, § 48-8-261, enacted by Ga. L. 2015, p. 236, § 7-5/HB 170; Ga. L. 2015, p. 1443, § 2/HB 106.)

48-8-262. Notice; agreement memorializing levy and rate of tax; rate; resolution required.

(a)(1) Except as otherwise provided in paragraph (2) of this subsection, prior to the issuance of the call for the referendum required by Code Section 48-8-263, any county that desires to levy a tax under this article shall deliver or mail a written notice to the mayor or chief elected official in each qualified municipality located within the special district. Such notice shall contain the date, time, place, and purpose of a meeting at which the governing authorities of the county and of each qualified municipality are to meet to discuss possible projects for inclusion in the referendum and the rate of tax. The notice shall be delivered or mailed at least ten days prior to the date of the meeting. The meeting shall be held at least 30 days prior to the issuance of the call for the referendum.

(2) When 90 percent or more of the geographic area of a special district is located within one or more qualified municipalities and when a qualified municipality or combination of qualified municipalities within the special district whose combined population within the special district is 60 percent or more of the aggregate population of all qualified municipalities within the special district desires to levy a tax under this article, such qualified municipality or municipalities

may deliver or mail written notice to the chief elected official of the governing authority of the county located within the special district calling for a meeting to discuss projects for inclusion in the referendum and the rate of levy of the tax. Such notice shall contain the date, time, place, and purpose of the meeting and shall be delivered or mailed at least ten days prior to the date of the meeting. The meeting shall be held at least 30 days prior to the issuance of the call for a referendum. If the county and all qualified municipalities within the special district do not enter into an intergovernmental agreement meeting the requirements of subsection (b) of this Code section within 30 days after the meeting, when 90 percent or more of the geographic area of a special district is located within one or more qualified municipalities the qualified municipality or combination of qualified municipalities within the special district whose combined population within the special district is 60 percent or more of the aggregate population of all qualified municipalities within the special district may adopt a resolution as provided in subsection (d) of this Code section and issue the call for a referendum on the levy of a tax under this article.

(b)(1) Following the meeting required by subsection (a) of this Code section and prior to any tax being imposed under this article, the county and all qualified municipalities therein may execute an intergovernmental agreement memorializing their agreement to the levy of a tax and the rate of such tax.

(2) If an intergovernmental agreement authorized by paragraph (1) of this subsection is entered into, it shall, at a minimum, include the following:

(A) A list of the projects and purposes qualifying as transportation purposes proposed to be funded from the tax, including an expenditure of at least 30 percent of the estimated revenue from the tax on projects included in the state-wide strategic transportation plan as defined in paragraph (6) of subsection (a) of Code Section 32-2-22;

(B) The estimated or projected dollar amounts allocated for each transportation purpose from proceeds from the tax;

(C) The procedures for distributing proceeds from the tax to qualified municipalities;

(D) A schedule for distributing proceeds from the tax to qualified municipalities which shall include the priority or order in which transportation purposes will be fully or partially funded;

(E) A provision that all transportation purposes included in the agreement shall be funded from proceeds from the tax except as otherwise agreed;

(F) A provision that proceeds from the tax shall be maintained in separate accounts and utilized exclusively for the specified purposes;

(G) Record-keeping and audit procedures necessary to carry out the purposes of this article; and

(H) Such other provisions as the county and qualified municipalities choose to address.

(c)(1) If an intergovernmental agreement is entered into by the county and all qualified municipalities, the rate of the tax may be up to 1 percent.

(2) If an intergovernmental agreement is not entered into by the county and all qualified municipalities, the maximum rate of the tax shall not exceed .75 percent and shall be determined by the governing authority of the county.

(d)(1) As soon as practicable after the meeting between the governing authorities of the county and qualified municipalities and the execution of an intergovernmental agreement, if applicable, the governing authority of the county shall by a majority vote on a resolution offered for such purpose submit the list of transportation purposes and the question of whether the tax should be approved to electors of the special district in the next scheduled election and shall notify the county election superintendent within the special district by forwarding to the superintendent a copy of such resolution calling for the imposition of the tax. Such list, or a digest thereof, shall be available during regular business hours in the office of the county clerk.

(2) The resolution authorized by paragraph (1) of this subsection shall describe:

(A) The specific transportation purposes to be funded;

(B) The approximate cost of such transportation purposes, which shall also be the maximum amount of net proceeds to be raised by the tax; and

(C) The maximum period of time, to be stated in calendar years, for which the tax may be imposed and the rate thereof. The maximum period of time for the imposition of the tax shall not exceed five years. (Code 1981, § 48-8-262, enacted by Ga. L. 2015, p. 236, § 7-5/HB 170; Ga. L. 2015, p. 1443, § 2/HB 106.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2015, "subsection (d)" was substituted for "subsection (e)" near the end of paragraph (a)(2).

48-8-263. Ballot question; expenses of election; resubmission of question; general obligation debt.

(a)(1) The ballot submitting the question of the imposition of the tax to the voters within the special district shall have written or printed thereon the following:

"( ) YES Shall a special ____ percent sales and use tax be imposed in the special district consisting of
( ) NO _____ County for a period of time not to exceed _____ and for the raising of not more than an estimated amount of $_____ for transportation purposes?"

(2) If debt is to be issued, the ballot shall also have written or printed thereon, following the language specified by paragraph (1) of this subsection, the following:

"If imposition of the tax is approved by the voters, such vote shall also constitute approval of the issuance of general obligation debt of _____ County in the principal amount of $_____ for the above purpose."

(b) The election superintendent shall issue the call and conduct the election in the manner authorized by general law. The superintendent shall canvass the returns, declare the result of the election, and certify the result to the Secretary of State and to the commissioner. The expense of the election shall be paid from county funds. All persons desiring to vote in favor of imposing the tax shall vote "Yes," and all persons opposed to imposing the tax shall vote "No." If more than one-half of the votes cast throughout the entire special district are in favor of imposing the tax, then the tax shall be imposed as provided in this article.

(c) Where such question is not approved by the voters, the county may resubmit such question from time to time upon compliance with the requirements of this article.

(d)(1) If the intergovernmental agreement, if applicable, and proposal include the authority to issue general obligation debt and if more than one-half of the votes cast are in favor of the proposal, then the authority to issue such debt in accordance with Article IX, Section V, Paragraph I of the Constitution is given to the proper officers of the county; otherwise, such debt shall not be issued. If the authority to issue such debt is so approved by the voters, then such debt may be issued without further approval by the voters.

(2) If the issuance of general obligation debt is included and approved as provided in this Code section, then the governing authority of the county may incur such debt either through the

issuance and validation of general obligation bonds or through the execution of a promissory note or notes or other instrument or instruments. If such debt is incurred through the issuance of general obligation bonds, such bonds and their issuance and validation shall be subject to Articles 1 and 2 of Chapter 82 of Title 36 except as specifically provided otherwise in this article. If such debt is incurred through the execution of a promissory note or notes or other instrument or instruments, no validation proceedings shall be necessary, and such debt shall be subject to Code Sections 36-80-10 through 36-80-14 except as specifically provided otherwise in this article. In either event, such general obligation debt shall be payable first from the separate account in which are placed the proceeds received by the county from the tax. Such general obligation debt shall, however, constitute a pledge of the full faith, credit, and taxing power of the county; and any liability on such debt which is not satisfied from the proceeds of the tax shall be satisfied from the general funds of the county. (Code 1981, § 48-8-263, enacted by Ga. L. 2015, p. 236, § 7-5/HB 170; Ga. L. 2015, p. 1443, § 2/HB 106.)

48-8-264. Timing of tax.

(a)(1) If the imposition of the tax is approved at the election, the tax shall be imposed on the first day of the next succeeding calendar quarter which begins more than 80 days after the date of the election at which the tax was approved by the voters.

(2) With respect to services which are regularly billed on a monthly basis, however, the resolution shall become effective with respect to and the tax shall apply to services billed on or after the effective date specified in paragraph (1) of this subsection.

(b) The tax shall cease to be imposed on the earliest of the following dates:

(1) If the resolution calling for the imposition of the tax provided for the issuance of general obligation debt and such debt is the subject of validation proceedings, as of the end of the first calendar quarter ending more than 80 days after the date on which a court of competent jurisdiction enters a final order denying validation of such debt;

(2) On the final day of the maximum period of time specified for the imposition of the tax; or

(3) As of the end of the calendar quarter during which the commissioner determines that the tax will have raised revenues sufficient to provide to the special district net proceeds equal to or greater than the amount specified as the maximum amount of net proceeds to be raised by the tax.

(c)(1) At any time, no more than a single tax under this article shall be imposed within a special district. Any tax imposed under this article may, subject to the requirements of subsection (c) of Code Section 48-8-262, be imposed at a rate of up to 1 percent but shall not exceed 1 percent. Any tax imposed under this article at a rate of less than 1 percent shall be in an increment of .05 percent.

(2) In any special district in which a tax is in effect under this article, proceedings may be commenced, while the tax is in effect, calling for the reimposition of the tax upon the termination of the tax then in effect; and an election may be held at the next scheduled election for this purpose while the tax is in effect. Such proceedings for the reimposition of a tax under this article shall be in the same manner as proceedings for the initial imposition of the tax, but the newly authorized tax shall not be imposed until the expiration of the tax then in effect.

(3) Following the expiration of a tax under this article, proceedings for the reimposition of a tax under this article may be initiated in the same manner as provided in this article for initial imposition of such tax. (Code 1981, § 48-8-264, enacted by Ga. L. 2015, p. 236, § 7-5/HB 170; Ga. L. 2015, p. 1443, § 2/HB 106.)

48-8-265. Administration and collection of tax.

A tax levied pursuant to this article shall be exclusively administered and collected by the commissioner for the use and benefit of the county and qualified municipalities within the special district imposing the tax. Such administration and collection shall be accomplished in the same manner and subject to the same applicable provisions, procedures, and penalties provided in Article 1 of this chapter; provided, however, that all moneys collected from each taxpayer by the commissioner shall be applied first to such taxpayer's liability for taxes owed the state; and provided, further, that the commissioner may rely upon a representation by or on behalf of the special district or the Secretary of State that such a tax has been validly imposed, and the commissioner and the commissioner's agents shall not be liable to any person for collecting any such tax which was not validly imposed. Dealers shall be allowed a percentage of the amount of the tax due and accounted for and shall be reimbursed in the form of a deduction in submitting, reporting, and paying the amount due if such amount is not delinquent at the time of payment. The deduction shall be at the rate and subject to the requirements specified under subsections (b) through (f) of Code Section 48-8-50. (Code 1981, § 48-8-265, enacted by Ga. L. 2015, p. 236, § 7-5/HB 170; Ga. L. 2015, p. 1443, § 2/HB 106.)

48-8-266. Required information on sales tax return.

Each sales tax return remitting taxes collected under this article shall separately identify the location of each retail establishment at which any of the taxes remitted were collected and shall specify the amount of sales and the amount of taxes collected at each establishment for the period covered by the return in order to facilitate the determination by the commissioner that all taxes imposed by this article are collected and distributed according to situs of sale. (Code 1981, § 48-8-266, enacted by Ga. L. 2015, p. 236, § 7-5/HB 170; Ga. L. 2015, p. 1443, § 2/HB 106.)

48-8-267. Procedure for disbursement of proceeds from taxation.

(a) The proceeds of the tax collected by the commissioner in each special district under this article shall be disbursed as soon as practicable after collection as follows:

(1) One percent of the amount collected shall be paid into the general fund of the state treasury in order to defray the costs of administration; and

(2) Except for the percentage provided in paragraph (1) of this subsection, the remaining proceeds of the tax shall be distributed:

(A) Pursuant to the terms of the intergovernmental agreement, if applicable; or

(B) If no intergovernmental agreement has been entered into, in accordance with subsection (b) of this Code section.

(b) In the event an intergovernmental agreement has not been entered into, then distribution of the proceeds shall be as follows:

(1) The state auditor shall determine the most recent three fiscal years for which an audit under Code Section 36-81-7 has been made;

(2) Utilizing the audit information under paragraph (1) of this subsection, the county and each qualified municipality shall receive a proportional amount of proceeds of the tax based upon the amount of expenditures made for transportation in the most recent three fiscal years. The proportional amount for the county and each qualified municipality shall be determined by dividing the average expended on transportation during the most recent three fiscal years by the county or qualified municipality by the aggregate average expended on transportation by the county and all qualified municipalities in the special district during the most recent three fiscal years. Amounts expended on transportation include transportation maintenance and

operation costs and shall correspond with classifications and subclassifications specified in the local government uniform chart of accounts under subsection (e) of Code Section 36-81-3 within section 4200, including noncapital expenditures within sections 4210-4270, and shall be reported in the local government audit. Total general fund expenditures by the local government within these categories shall be specified in the footnotes of the audited financial statement. If such transportation expenditures include maintenance and operation costs to support local government airport and transit operations, reported in functions 7561 and 7563 of the uniform chart, the general fund costs for those functions shall be included in the footnotes of the local government's audited financial report; and

(3) Following the determinations made pursuant to paragraph (2) of this subsection and at least 30 days prior to the referendum, the state auditor shall certify the appropriate distribution percentages to the commissioner and the commissioner shall utilize such percentages for the distribution of proceeds for the term of the tax. (Code 1981, § 48-8-267, enacted by Ga. L. 2015, p. 236, § 7-5/HB 170; Ga. L. 2015, p. 1443, § 2/HB 106.)

48-8-268. Impact of tax upon other funding and budgeting considerations.

(a) The proceeds of a tax under this article shall not be subject to any allocation or balancing of state and federal funds provided for by general law, and such proceeds shall not be considered or taken into account in any such allocation or balancing.

(b) The approval of the tax under this article shall not in any way diminish the percentage of state or federal funds allocated to any of the local governments under Code Section 32-5-27 within the special district levying the tax. The amount of state or federal funds expended in the county or any qualified municipality within the special district shall not be decreased or diverted due to the use of proceeds from the tax levied under this article for transportation purposes that have a high priority in the state-wide strategic transportation plan. (Code 1981, § 48-8-268, enacted by Ga. L. 2015, p. 236, § 7-5/HB 170; Ga. L. 2015, p. 1443, § 2/HB 106.)

48-8-269. Exemption from taxation.

(a) Except as to rate, a tax imposed under this article shall correspond to the tax imposed by Article 1 of this chapter. No item or transaction which is not subject to taxation under Article 1 of this chapter shall be subject to a tax imposed under this article, except that a tax imposed under this article shall not apply to:

(1) The sale or use of any type of fuel used for off-road heavy-duty equipment, off-road farm or agricultural equipment, or locomotives;

(2) The sale or use of jet fuel to or by a qualifying airline at a qualifying airport;

(3) The sale or use of fuel that is used for propulsion of motor vehicles on the public highways;

(4) The sale or use of energy used in the manufacturing or processing of tangible goods primarily for resale;

(5) The sale or use of motor fuel as defined under paragraph (9) of Code Section 48-9-2 for public mass transit; or

(6) The purchase or lease of any motor vehicle pursuant to Code Section 48-5C-1.

(b) Except as otherwise specifically provided in this article, the tax imposed pursuant to this article shall be subject to any sales and use tax exemption which is otherwise imposed by law; provided, however, that the tax levied by this article shall be applicable to the sale of food and food ingredients as provided for in paragraph (57) of Code Section 48-8-3. (Code 1981, § 48-8-269, enacted by Ga. L. 2015, p. 236, § 7-5/HB 170; Ga. L. 2015, p. 1443, § 2/HB 106.)

48-8-269.1. Credit for other taxes paid in calculating taxes due.

Where a local sales or use tax has been paid with respect to tangible personal property by the purchaser either in another local tax jurisdiction within this state or in a tax jurisdiction outside this state, the tax may be credited against the tax authorized to be imposed by this article upon the same property. If the amount of sales or use tax so paid is less than the amount of the tax due under this article, the purchaser shall pay an amount equal to the difference between the amount paid in the other tax jurisdiction and the amount due under this article. The commissioner may require such proof of payment in another local tax jurisdiction as he or she deems necessary and proper. No credit shall be granted, however, against the tax under this article for tax paid in another jurisdiction if the tax paid in such other jurisdiction is used to obtain a credit against any other local sales and use tax levied in the county or in a special district which includes the county. (Code 1981, § 48-8-269.1, enacted by Ga. L. 2015, p. 236, § 7-5/HB 170; Ga. L. 2015, p. 1443, § 2/HB 106.)

48-8-269.2. Delivery outside of geographical area.

No tax shall be imposed upon the sale of tangible personal property which is ordered by and delivered to the purchaser at a point outside

the geographical area of the county in which the tax is imposed regardless of the point at which title passes, if the delivery is made by the seller's vehicle, United States mail, or common carrier or by private or contract carrier. (Code 1981, § 48-8-269.2, enacted by Ga. L. 2015, p. 236, § 7-5/HB 170; Ga. L. 2015, p. 1443, § 2/HB 106.)

48-8-269.3. Commissioner's authority to promulgate rules and regulations.

The commissioner shall have the power and authority to promulgate such rules and regulations as shall be necessary for the effective and efficient administration and enforcement of the collection of the tax. (Code 1981, § 48-8-269.3, enacted by Ga. L. 2015, p. 236, § 7-5/HB 170; Ga. L. 2015, p. 1443, § 2/HB 106.)

48-8-269.4. Impact on other taxes.

Except as provided in Code Section 48-8-6, the tax authorized under this article shall be in addition to any other local sales and use tax. Except as otherwise provided in this article and except as provided in Code Section 48-8-6, the imposition of any other local sales and use tax within a county or qualified municipality within a special district shall not affect the authority of a county to impose the tax authorized under this article, and the imposition of the tax authorized under this article shall not affect the imposition of any otherwise authorized local sales and use tax within the special district. (Code 1981, § 48-8-269.4, enacted by Ga. L. 2015, p. 236, § 7-5/HB 170; Ga. L. 2015, p. 1443, § 2/HB 106.)

48-8-269.5. Accounting required; record-keeping requirements.

(a)(1) The proceeds received from the tax shall be used by the county and qualified municipalities within the special district exclusively for the transportation purposes specified in the resolution calling for imposition of the tax. Such proceeds shall be kept in a separate account from other funds of any county or qualified municipality receiving proceeds of the tax and shall not in any manner be commingled with other funds of any county or qualified municipality prior to the expenditure.

(2) The governing authority of each county and the governing authority of each qualified municipality receiving any proceeds from the tax under this article shall maintain a record of each and every purpose for which the proceeds of the tax are used. A schedule shall be included in each annual audit which shows for each purpose in the resolution calling for imposition of the tax the original estimated cost,

the current estimated cost if it is not the original estimated cost, amounts expended in prior years, and amounts expended in the current year. The auditor shall verify and test expenditures sufficient to provide assurances that the schedule is fairly presented in relation to the financial statements. The auditor's report on the financial statements shall include an opinion, or disclaimer of opinion, as to whether the schedule is presented fairly in all material respects in relation to the financial statements taken as a whole.

(b) No general obligation debt shall be issued in conjunction with the imposition of the tax unless the county governing authority determines that, and if the debt is to be validated it is demonstrated in the validation proceedings that, during each year in which any payment of principal or interest on the debt comes due, the county will receive from the tax net proceeds sufficient to fully satisfy such liability. General obligation debt issued under this article shall be payable first from the separate account in which are placed the proceeds received by the county from the tax. Such debt, however, shall constitute a pledge of the full faith, credit, and taxing power of the county; and any liability on such debt which is not satisfied from the proceeds of the tax shall be satisfied from the general funds of the county.

(c) The intergovernmental agreement, if applicable, and resolution calling for the imposition of the tax may specify that all of the proceeds of the tax will be used for payment of general obligation debt issued in conjunction with the imposition of the tax, and, in that event, such proceeds shall be solely for such purpose except as otherwise provided in subsection (f) of this Code section.

(d) The intergovernmental agreement, if applicable, and resolution calling for the imposition of the tax may specify that a part of the proceeds of the tax will be used for payment of general obligation debt issued in conjunction with the imposition of the tax. The intergovernmental agreement, if applicable, and resolution shall specifically state the other purposes for which such proceeds will be used. In such a case, no part of the net proceeds from the tax received in any year shall be used for such other purposes until all debt service requirements of the general obligation debt for that year have first been satisfied from the account in which the proceeds of the tax are placed.

(e) The resolution calling for the imposition of the tax may specify that no general obligation debt is to be issued in conjunction with the imposition of the tax. The intergovernmental agreement, if applicable, and resolution shall specifically state the purpose or purposes for which the proceeds will be used.

(f)(1)(A) If the proceeds of the tax are specified to be used solely for the purpose of payment of general obligation debt issued in

conjunction with the imposition of the tax, then any net proceeds of the tax in excess of the amount required for final payment of such debt shall be subject to and applied as provided in paragraph (2) of this subsection.

(B) If the special district receives from the tax net proceeds in excess of the maximum cost of the transportation projects and purposes stated in the resolution calling for the imposition of the tax or in excess of the actual cost of such projects and purposes, then such excess proceeds shall be subject to and applied as provided in paragraph (2) of this subsection unless otherwise specified in the intergovernmental agreement, if applicable.

(C) If the tax is terminated under paragraph (1) of subsection (b) of Code Section 48-8-264 by reason of denial of validation of debt, then all net proceeds received by the special district from the tax shall be excess proceeds subject to paragraph (2) of this subsection.

(2) Excess proceeds subject to this subsection shall be used solely for the purpose of reducing any indebtedness of any county or qualified municipality within the special district other than indebtedness incurred pursuant to this article. If there is no such other indebtedness or if the excess proceeds exceed the amount of any such other indebtedness, then the excess proceeds shall next be paid into the general fund of such county or qualified municipality, it being the intent that any funds so paid into the general fund of such county or qualified municipality be used for the purpose of reducing ad valorem taxes. (Code 1981, § 48-8-269.5, enacted by Ga. L. 2015, p. 236, § 7-5/HB 170; Ga. L. 2015, p. 1443, § 2/HB 106.)

48-8-269.6. Annual publication of report.

Not later than December 31 of each year, the governing authority of each county and each qualifying municipality receiving any proceeds from the tax under this article shall publish annually, in a newspaper of general circulation in the boundaries of such county or municipality, a simple, nontechnical report which shows for each purpose in the resolution calling for the imposition of the tax the original estimated cost, the current estimated cost if it is not the original estimated cost, amounts expended in prior years, and amounts expended in the current year. The report shall also include a statement of what corrective action the county or qualified municipality intends to implement with respect to each purpose which is underfunded or behind schedule and a statement of any surplus funds which have not been expended for a purpose. (Code 1981, § 48-8-269.6, enacted by Ga. L. 2015, p. 236, § 7-5/HB 170; Ga. L. 2015, p. 1443, § 2/HB 106.)

CHAPTER 9

MOTOR FUEL AND ROAD TAXES

Article 1

Motor Fuel Tax

ARTICLE 1

MOTOR FUEL TAX

48-9-3. Levy of excise tax; rate; taxation of motor fuels not commonly sold or measured by gallon; rate; prohibition of tax on motor fuel by political subdivisions; exception; exempted sales.

(a)(1) An excise tax is imposed at the rate of 26¢ per gallon on distributors who sell or use motor fuel, other than diesel fuel, within this state. An excise tax is imposed at the rate of 29¢ per gallon on distributors who sell or use diesel fuel within this state. It is the intention of the General Assembly that the legal incidence of the tax be imposed upon the distributor.

(1.1)(A) Beginning on July 1, 2016, and annually thereafter, the amount of this excise tax per gallon on distributors shall be automatically adjusted on an annual basis in accordance with this paragraph.

(B) Using 2014 as a base year, the department shall determine the average miles per gallon of all new vehicles registered in this state pursuant to Code Section 48-5C-1 using the average of combined miles per gallon published in the United States Department of Energy Fuel Economy Guide. Beginning on July 1, 2016, and each year thereafter, the department shall calculate the average miles per gallon of all new vehicles registered in this state in the previous year. The excise tax rate shall be multiplied by the percentage increase or decrease in fuel efficiency from the previous year, and the resulting increase or decrease shall be added to the excise tax rate to determine the preliminary excise tax rate.

(C) Once the preliminary excise tax rate is established, it shall be multiplied by the annual percentage of increase or decrease in the Consumer Price Index. The resulting calculation shall be added

to the preliminary excise tax rate, and the result of such calculation shall be the new excise tax rate for motor fuels for the next calendar year. The Consumer Price Index shall no longer be used after July 1, 2018.

(2) In the event any motor fuels which are not commonly sold or measured by the gallon are used in any motor vehicles on the public highways of this state, the commissioner may assess, levy, and collect a tax upon such fuels, under such regulations as the commissioner may promulgate, in accordance with and measured by the nearest power potential equivalent to that of one gallon of regular grade gasoline. Any determination by the commissioner of the power potential equivalent of such motor fuels shall be prima-facie correct. Upon each such quantity of such fuels used upon the public highways of this state, a tax at the same rate per gallon imposed on motor fuel under paragraph (1) of this subsection shall be assessed and collected.

(3) No county, municipality, or other political subdivision of this state shall levy any fee, license, or other excise tax on a gallonage basis upon the sale, purchase, storage, receipt, distribution, use, consumption, or other disposition of motor fuel. Nothing contained in this article shall be construed to prevent a county, municipality, or other political subdivision of this state from levying license fees or taxes upon any business selling motor fuel.

(4)(A) For purposes of this subsection, and notwithstanding the provisions of paragraph (2) of this subsection and any provision contained in the National Bureau of Standards Handbook or any other national standard that may be adopted by law or regulation, the gallon equivalent of compressed natural gas shall be not less than 110,000 British thermal units and the gallon equivalent of liquefied natural gas shall not be less than 6.06 pounds.

(B) As used in this paragraph, the term:

(i) "Compressed natural gas" means a mixture of hydrocarbon gases and vapors, consisting principally of methane in gaseous form, that has been compressed for use as a motor fuel.

(ii) "Liquefied natural gas" means methane or natural gas in the form of a cryogenic or refrigerated liquid for use as a motor fuel.

(b) No tax is imposed by this article upon or with respect to the following sales by duly licensed distributors:

(1) Bulk sales to a duly licensed distributor;

(2) Sales of motor fuel for export from this state when exempted by any provisions of the Constitutions of the United States or this state;

(3) Sales of motor fuel to a licensed distributor for export from this state;

(4) Sales of motor fuel to the United States for the exclusive use of the United States when the motor fuel is purchased and paid for by the United States;

(5) Sales of aviation gasoline to a duly licensed aviation gasoline dealer, except for 1¢ per gallon of the tax imposed by paragraph (1) of subsection (a) of this Code section;

(6) Bulk sales of compressed petroleum gas or special fuel to a duly licensed consumer distributor;

(7)(A) Sales of compressed petroleum gas or special fuel to a consumer who has no highway use of the fuel at the time of the sale and does not resell the fuel. Consumers of compressed petroleum gas or special fuel who have both highway and nonhighway use of the fuel and resellers of such fuel must be licensed as distributors in order for sales of the fuel to be tax exempt. Each type of motor fuel is to be considered separately under this exemption.

(B)(i) In instances where a sale of compressed petroleum gas has been made to an ultimate consumer who has both highway and nonhighway use of that type of motor fuel and no tax has been paid by the distributor on the sale, the consumer shall become licensed as a consumer distributor of that type of motor fuel. After the consumer is licensed as a consumer distributor and if it is demonstrated to the satisfaction of the commissioner that the motor fuel purchased prior to the licensee's becoming licensed as a consumer distributor was used for nonhighway purposes, such sales shall be exempt from the tax imposed by this article; provided, however, that, if at the time of demonstration the ultimate consumer does not have both highway and nonhighway use of such fuel but it can be demonstrated by the distributor to the satisfaction of the commissioner that the motor fuel was used for nonhighway purposes, the sales shall be exempt from the tax imposed by this article; and

(ii)(I) Any special fuel sold by a distributor to a purchaser who has a storage receptacle which has a connection to a withdrawal outlet that may be used for highway use, as defined in paragraph (8) of Code Section 48-9-2, is not exempt from the motor fuel and road taxes imposed by this article unless: (1) the purchaser is at the time of sale a valid licensed distributor of that type of motor fuel, or (2) an exemption certificate has been obtained from the purchaser on forms furnished by the Department of Revenue showing that the purchaser has no highway use of such fuels and is not a reseller of such fuels.

Each exemption certificate shall be valid for a period of not more than three years and shall be kept by the distributor as one of the records specified in Code Section 48-9-8. It shall be the responsibility of the purchaser to notify the distributor when the purchaser is no longer qualified for the nonhighway exemption. All applicable taxes must be charged the purchaser until the purchaser is granted a valid distributor's license for that type of motor fuel.

(II) Any such purchaser granted an exemption under subdivision (I) of this division who falsely claims the exemption or fails to rescind the purchaser's exemption certificate to the distributor in writing when he or she is no longer eligible for the exemption shall be deemed a distributor for purposes of taxation and is subject to all provisions of this article relating to distributors. This division in no way shall restrict the option of the purchaser to become licensed as a distributor. If the distributor sells special fuel to a purchaser who has a storage receptacle which has a connection to a withdrawal outlet that may be used for highway use, as defined in paragraph (8) of Code Section 48-9-2, and the purchaser is not a valid licensed distributor and has not executed a valid signed exemption certificate, the taxes imposed by this article are due from the distributor and not the purchaser on all sales of that type of fuel to that purchaser;

(8) Sales of fuel oils, compressed petroleum gas, or special fuel directly to an ultimate consumer to be used for heating purposes only. The delivery of fuel oils, compressed petroleum gas, or special fuel directly to an ultimate consumer to be used for heating purposes only shall be made directly into the storage receptacle of the heating unit of the consumer by the licensed distributor. To qualify for this exemption, sales must be delivered into storage receptacles that are not equipped with any secondary withdrawal outlets for the motor fuel;

(9) Sales of dyed fuel oils to a consumer for other than highway use as defined in paragraph (8) of Code Section 48-9-2;

(10)(A) During the period of July 1, 2012, through June 30, 2015, sales of motor fuel, as defined in paragraph (9) of Code Section 48-9-2, for public mass transit vehicles which are owned by public transportation systems which receive or are eligible to receive funds pursuant to 49 U.S.C. Sections 5307 and 5311 for which passenger fares are routinely charged and which vehicles are used exclusively for revenue generating purposes which motor fuel sales occur at bulk purchase facilities approved by the department.

(B) During the period of July 1, 2012, through June 30, 2015, sales of motor fuel, as defined in paragraph (9) of Code Section

48-9-2, for vehicles operated by a public campus transportation system, provided that such system has a policy which provides for free transfer of passengers from the public transportation system operated by the jurisdiction in which the campus is located; makes the general public aware of such free transfer policy; and receives no state or federal funding to assist in the operation of such public campus transportation system and which motor fuel sales occur at bulk purchase facilities approved by the department.

(C) For purposes of this paragraph, the term "vehicle" or "vehicles" means buses, vans, minibuses, or other vehicles which have the capacity to transport seven or more passengers; or

(11) For the period of time beginning July 1, 2013, and ending June 30, 2015, sales of motor fuel to public school systems in this state for the exclusive use of the school system in operating school buses when the motor fuel is purchased and paid for by the school system.

(c) Fuel oils, compressed petroleum gas, or special fuel used by a duly licensed distributor for nonhighway purposes is exempt from the tax imposed by this article.

(d) No export from this state shall be recognized as being exempt from tax under paragraphs (2) and (3) of subsection (b) of this Code section unless the exporter informs the seller and the terminal operator of the intention to export and causes to be set out the minimum information specified in subsection (e) of Code Section 48-9-17 on the bill of lading or equivalent documentation under which the motor fuel is transported. In the event that the motor fuel is delivered to any point other than that which is set out on the bill of lading or equivalent documentation, the legal incidence of the tax shall continue to be imposed exclusively upon the exporter who caused the export documentation to be issued and no exemption shall be recognized until suitable proof of exportation has been provided to the commissioner. (Code 1933, § 92-1403, enacted by Ga. L. 1978, p. 186, § 1; Code 1933, § 91A-5003, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1979, p. 5, § 102; Ga. L. 1979, p. 1274, §§ 1, 3; Ga. L. 1980, p. 10, § 30; Ga. L. 1985, p. 1644, § 1; Ga. L. 1986, p. 10, § 48; Ga. L. 1993, p. 811, § 2; Ga. L. 1993, p. 1502, § 4; Ga. L. 1994, p. 569, § 1; Ga. L. 1995, p. 10, § 48; Ga. L. 1995, p. 359, § 2; Ga. L. 2004, p. 425, § 2; Ga. L. 2005, p. 60, § 48/HB 95; Ga. L. 2005, p. 505, § 1/HB 384; Ga. L. 2006, p. 523, § 1/HB 1244; Ga. L. 2008, p. 889, § 2/HB 1035; Ga. L. 2010, p. 813, § 2/HB 1393; Ga. L. 2012, p. 1348, § 1/HB 743; Ga. L. 2013, p. 786, § 1/HB 211; Ga. L. 2013, p. 869, § 1/HB 371; Ga. L. 2015, p. 236, § 5-13/HB 170.)

The 2015 amendment, effective July 1, 2015, in paragraph (a)(1), in the first sentence, substituted "26¢ per gallon" for "7 ½¢ per gallon" and inserted ", other

than diesel fuel,", and added the second sentence; added paragraph (a)(1.1); and deleted "and all of the tax imposed by Code Section 48-9-14" following "Code section" at the end of paragraph (b)(5). See editor's note for applicability.

Editor's notes. — Ga. L. 2015, p. 236, § 9-1(b)/HB 170, not codified by the General Assembly, provides that: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of this Act." This Act became effective July 1, 2015.

Ga. L. 2015, p. 236, § 8-1/HB 170, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Transportation Funding Act of 2015.'"

Ga. L. 2015, p. 236, § 8-2/HB 170, not codified by the General Assembly, provides that: "It is the intention of the General Assembly, subject to appropriations and other constitutional obligations of this state, that year to year revenue increases be prioritized to fund education, transportation, and health care in this state."

48-9-14. Second motor fuel tax; rate; exemptions; applicability of Article 1 of Chapter 8 of this title.

Reserved. Repealed by Ga. L. 2015, p. 236, § 5-14/HB 170, effective July 1, 2015.

Editor's notes. — This Code section was based on Code 1933, § 92-1420, enacted by Ga. L. 1979, p. 1274, § 2; Code 1933, § 91A-5015, enacted by Ga. L. 1979, p. 1274, § 4; Ga. L. 1992, p. 815, § 4; Ga. L. 1993, p. 995, § 2; Ga. L. 2003, p. 355, § 6; Ga. L. 2003, p. 665, § 16; Ga. L. 2009, p. 8, § 48/SB 46.

Ga. L. 2015, p. 236, § 9-1(b)/HB 170, not codified by the General Assembly, provides that: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of this Act." This Act became effective July 1, 2015.

Ga. L. 2015, p. 236, § 8-1/HB 170, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Transportation Funding Act of 2015.'"

Ga. L. 2015, p. 236, § 8-2/HB 170, not codified by the General Assembly, provides that: "It is the intention of the General Assembly, subject to appropriations and other constitutional obligations of this state, that year to year revenue increases be prioritized to fund education, transportation, and health care in this state."

CHAPTER 11

TAXES ON TOBACCO PRODUCTS

Sec.

48-11-4. Licensing of persons engaged in tobacco business; initial and annual fees; suspension and revocation; registration and inspection of vending machines; bond by distributor; jurisdiction; licensing of promotional activities.

(a) No person shall engage in or conduct the business of manufacturing, importing, brokering, purchasing, selling, consigning, vending, dealing in, shipping, receiving, or distributing cigars, cigarettes, or loose or smokeless tobacco in this state without first obtaining a license from the commissioner.

(b) All licenses shall be issued by the commissioner, who shall make rules and regulations with respect to applications for and issuance of the licenses and for other purposes of enforcing this chapter. The commissioner may refuse to issue any license under this chapter when the commissioner has reasonable cause to believe that the applicant has willfully withheld information requested of the applicant or required by the regulations to be provided or reported or when the commissioner has reasonable cause to believe that the information submitted in any application or report is false or misleading and is not given in good faith.

(c)(1) The annual renewal fee for a manufacturer's, importer's, distributor's, or dealer's license shall be $10.00. There shall also be a first year registration fee of $250.00 for a person commencing business as a manufacturer, importer, or distributor. All renewal applications shall be filed at least 30 days in advance of the expiration date shown on the license.

(2) Each license, except a dealer's license, shall begin on July 1 and end on June 30 of the next succeeding year. The prescribed fee shall accompany every application for a license and shall apply for any portion of the annual period.

(3) Each dealer's license shall be valid for 12 months beginning on the date of issue for the initial license, and the first day of the month of issue for subsequent licenses, and shall expire on the last day of the month preceding the month in which the initial license was issued. Any dealer licensed under the provisions of this Code section who is also licensed under Chapter 2 of Title 3 to sell alcoholic beverages may, upon written request to the commissioner, arrange to have both licenses renewed on the same date each year. Any dealer that follows the proper procedure for a renewal of his or her license, including filing the application for renewal at least 30 days in advance of the expiration date of his or her existing license, shall be allowed to continue operating as a dealer under the existing license until the commissioner has issued the new license or denied the application for renewal.

(4) Each manufacturer's, importer's, distributor's, or dealer's license shall be subject to suspension or revocation for violation of any of the provisions of this chapter or of the rules and regulations made pursuant to this chapter. A separate license shall be required for each place of business. No person shall hold a distributor's license and a dealer's license at the same time.

(d) The commissioner may make rules and regulations governing the sale of cigars, cigarettes, loose or smokeless tobacco, and other tobacco products in vending machines. The commissioner shall require annually a special registration of each vending machine for any operation in this state and charge a license fee for the registration in the amount of $10.00 for each machine. The annual registration shall indicate the location of the vending machine. No vending machine shall be purchased or transported into this state for use in this state when the vending machine is not so designed as to permit inspection without opening the machine for the purpose of determining that all cigars, cigarettes, loose or smokeless tobacco, and other tobacco products contained in the machine bear the tax stamp required under this chapter.

(e) The manufacturer's, importer's, distributor's, or dealer's license shall be exhibited in the place of business for which it is issued in the manner prescribed by the commissioner. The commissioner shall require each licensed distributor to file with the commissioner a bond in an amount of not less than $1,000.00 to guarantee the proper performance of the distributor's duties and the discharge of the distributor's liabilities under this chapter. The bond shall run concurrently with the distributor's license but shall remain in full force and effect for a period of one year after the expiration or revocation of the distributor's license unless the commissioner certifies that all obligations due the state arising under this chapter have been paid.

(f) The jurisdiction of the commissioner in the administration of this chapter shall extend to every person using or consuming cigars, cigarettes, or loose or smokeless tobacco in this state and to every person dealing in cigars, cigarettes, or loose or smokeless tobacco in any way for business purposes and maintaining a place of business in this state. For the purpose of this chapter, the maintaining of an office, store, plant, warehouse, stock of goods, or regular sales or promotional activity, whether carried on automatically or by salespersons or other representatives, shall constitute, among other activities, the maintaining of a place of business. For the purpose of enforcement of this chapter and the rules and regulations promulgated under this chapter, notwithstanding any other provision of law, the commissioner or his or her duly appointed hearing officer is granted authority to conduct hearings which shall at all times be exercised in conformity with rules and

regulations promulgated by the commissioner and consistent with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(g) The commissioner may provide for the licensing of promotional activities, not including the sale of cigars, cigarettes, or loose or smokeless tobacco, carried on by the manufacturer. The fee for any such license shall be $10.00 annually. (Ga. L. 1955, p. 268, § 5; Ga. L. 1960, p. 125, § 3; Code 1933, § 91A-5504, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 10, § 37; Ga. L. 1993, p. 343, § 6; Ga. L. 2003, p. 665, § 21; Ga. L. 2004, p. 384, § 2; Ga. L. 2005, p. 60, § 48/HB 95; Ga. L. 2012, p. 831, § 3/HB 1071; Ga. L. 2013, p. 141, § 48/HB 79; Ga. L. 2015, p. 932, § 1/HB 312.)

The 2015 amendment, effective May 6, 2015, in subsection (e), deleted "manufacturer, importer, or" preceding "distributor" near the beginning of the second sentence and deleted "manufacturer's importer's, or" preceding "distributor's" four times.

CHAPTER 12

ESTATE TAX

Sec.

Editor's notes. — Ga. L. 2014, p. 762, § 1/HB 658, effective April 28, 2014, repealed the Code sections formerly codified at this chapter and enacted the current chapter. The former chapter consisted of Code Sections 48-12-1, 48-12-1.1, 48-12-2 through 48-12-6, relating to estate tax, and was based on Ga. L. 1925, p. 63, §§ 1, 3, 4; Ga. L. 1926, Ex. Sess., p. 15, § 1; Ga. L. 1927, p. 103, § 1; Ga. L. 1931, p. 7, § 15; Code 1933, § 92-3401a, enacted by Ga. L. 1941, p. 221, § 1; §§ 92-3401, 92-3403, 92-3404; § 92-3402, enacted by Ga. L. 1961, p. 455, § 1; Ga. L. 1960, p. 835, § 1; Ga. L. 1976, p. 624, §§ 1-2; § 92-3404.1, enacted by Ga. L. 1976, p. 624, §§ 3, 4; §§ 91A-5702 through 91A-5706, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1980, p. 10, §§ 38, 39; Ga. L. 1987, p. 191, § 8; Code 1981, § 48-12-1.1, enacted by Ga. L. 2005, p. 159, § 26/HB 488.

48-12-1. Elimination of estate taxes and returns; prior taxable years not applicable.

(a) On and after July 1, 2014, there shall be no estate taxes levied by the state and no estate tax returns shall be required by the state.

(b) Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the enactment of this Code

section and shall continue to be governed by the provisions of general law as it existed immediately prior to July 1, 2014.

(c) This Code section shall not abate any prosecution, punishment, penalty, administrative proceeding or remedy, or civil action related to any violation of law committed prior to July 1, 2014. (Code 1981, § 48-12-1, enacted by Ga. L. 2014, p. 762, § 1/HB 658.)

Effective date. — This Code section became effective April 28, 2014.

CHAPTER 13

SPECIFIC, BUSINESS, AND OCCUPATION TAXES

Article 3

Excise Tax on Rooms, Lodgings, and Accommodations

Sec.

Article 7

Taxation of Consumer Fireworks

Sec.

ARTICLE 1

GENERAL PROVISIONS

48-13-5. Definitions.

JUDICIAL DECISIONS

City responsible for occupation tax. — In a declaration suit, a city was properly determined not to be a local authority as that term is used in O.C.G.A. § 48-13-13(5) and, thus, was subject to the levy of occupation taxes by another municipality for the city's proprietary operations at the city's airport, which was in the other municipality's city limits, because the terms local authority and municipality were not the same under the statute. City of Atlanta v. City of College Park, 292 Ga. 741, 741 S.E.2d 147 (2013).

48-13-9. Limitation on authority of local government to impose regulatory fee; examples of those which may be subject to fees; individuals and entities not subject to fees; general laws not repealed.

Editor's notes. — Ga. L. 2013, p. 37, § 3-1/HB 487, not codified by the General Assembly, provides, in part, that: "(b) If any section of this Act is determined to be

unconstitutional by a final decision of an appellate court of competent jurisdiction or by the trial court of competent jurisdiction if no appeal is made, with the exception of subsection (g) of Code Section 50-27-78 and Section 2-1 of this Act, this Act shall stand repealed by operation of law.

"(c) This Act is not intended to and shall not be construed to affect the legality of the repair, transport, possession, or use of otherwise prohibited gambling devices on maritime vessels within the jurisdiction of the State of Georgia. To the extent that such repair, transport, possession, or use was lawful prior to the enactment of this Act, it shall not be made illegal by this Act; and to the extent that such repair, transport, possession, or use was prohibited prior to the enactment of this Act, it shall remain prohibited." As of July 1, 2015, no such finding has been issued.

JUDICIAL DECISIONS

Ordinance imposing an occupational tax. — Provisions in a city ordinance allowing the city to inspect an attorney's financial records and to issue an execution to recover unpaid taxes due constituted neither a precondition to the practice of law nor an attempt to regulate such practice because the city's right to review the financial records did not require the production of material protected by attorney-client privilege and gross revenue statements were specifically protected from disclosure. Moss v. City of Dunwoody, 293 Ga. 858, 750 S.E.2d 326 (2013).

48-13-10. Determining amount of occupation tax; criteria for classification of businesses and practitioners; administrative fee; exemptions or reduction in fees for economic development; election of tax by practitioner.

JUDICIAL DECISIONS

Ordinance imposing an occupational tax on attorneys. — City ordinance imposing an occupational tax on attorneys who maintain an office and practice law in the city did not violate constitutional equal protection because the tax was paid for a variety of city services that benefited all citizens within the city, including attorneys, it was reasonable for the city to require attorneys with offices inside city limits to help pay for city services from which the attorneys benefit, and all attorneys subject to the ordinance were taxed uniformly. Moss v. City of Dunwoody, 293 Ga. 858, 750 S.E.2d 326 (2013).

City ordinance imposing an occupational tax on attorneys who maintained an office and practiced law in the city did not operate as an unconstitutional precondition on the practice of law nor was it an improper attempt to regulate the practice of law in violation of O.C.G.A. § 15-19-30 because the ordinance did not authorize the city to withhold a certificate from any attorney who failed to comply with the ordinance and attorneys were clearly exempted from regulatory treatment under the ordinance. Moss v. City of Dunwoody, 293 Ga. 858, 750 S.E.2d 326 (2013).

Ordinance requiring financial disclosure of attorney's records. — Provisions in a city ordinance allowing the city to inspect an attorney's financial records and to issue an execution to recover unpaid taxes due constituted neither a precondition to the practice of law nor an attempt to regulate such practice because the city's right to review the financial records did not require the production of material protected by attorney-client privilege and gross revenue statements were specifically protected from disclosure. Moss v. City of Dunwoody, 293 Ga. 858, 750 S.E.2d 326 (2013).

48-13-13. Prohibitions on occupation tax levies by local governments.

JUDICIAL DECISIONS

City was not a local authority.

In a declaration suit, a city was properly determined not to be a local authority as that term is used in O.C.G.A. § 48-13-13(5) and, thus, was subject to the levy of occupation taxes by another municipality for the city's proprietary operations at the city's airport, which was in the other municipality's city limits, because the terms local authority and municipality were not the same under the statute. City of Atlanta v. City of College Park, 292 Ga. 741, 741 S.E.2d 147 (2013).

48-13-15. Confidentiality of information provided by business or practitioner; violation; when disclosure allowed.

JUDICIAL DECISIONS

Ordinance allowing inspection of attorney's financial records. — Provisions in a city ordinance allowing the city to inspect an attorney's financial records and to issue an execution to recover unpaid taxes due constituted neither a precondition to the practice of law nor an attempt to regulate such practice because the city's right to review the financial records did not require the production of material protected by attorney-client privilege and gross revenue statements were specifically protected from disclosure. Moss v. City of Dunwoody, 293 Ga. 858, 750 S.E.2d 326 (2013).

48-13-16. Excluded businesses or practitioners; other laws on occupation taxes or registration fees of local governments not repealed.

JUDICIAL DECISIONS

Authority and municipality do not have same meaning. — In a declaration suit, a city was properly determined not to be a local authority as that term is used in O.C.G.A. § 48-13-13(5) and, thus, was subject to the levy of occupation taxes by another municipality for the city's proprietary operations at the city's airport, which was in the other municipality's city limits, because the terms local authority and municipality were not the same under the statute. City of Atlanta v. City of College Park, 292 Ga. 741, 741 S.E.2d 147 (2013).

ARTICLE 3

EXCISE TAX ON ROOMS, LODGINGS, AND ACCOMMODATIONS

48-13-50.3. Additional tax imposed by innkeepers; forms for reporting; use of funds from additional taxes; provisions for termination.

(a) As used in this Code section, the term:

(1) "Extended stay rental" means providing for value to the public a hotel or motel room for longer than 30 consecutive days to the same customer.

(2) "Innkeeper" means any person who is subject to taxation under this article for the furnishing for value to the public a hotel or motel room.

(3) "Transportation purposes" means and includes roads, bridges, public transit, rails, airports, buses, seaports, including without limitation road, street, and bridge purposes pursuant to paragraph (1) of subsection (b) of Code Section 48-8-121, and all accompanying infrastructure and services necessary to provide access to these transportation facilities, including general obligation debt and other multiyear obligations issued to finance such purposes.

(b) On or after July 1, 2015, each innkeeper in this state shall charge a $5.00 per night fee to the customer, unless it is an extended stay rental, for each calendar day a hotel or motel room is rented or leased. The innkeeper shall collect the fee at the time the customer pays for the rental or lease of such hotel or motel room. The innkeeper collecting the fee shall remit the fee on a monthly basis to the department.

(c) The commissioner shall promulgate and make available forms for the use of innkeepers to assist in compliance with this Code section. The commissioner shall promulgate rules and regulations as necessary to implement and administer the provisions of this Code section.

(d) It is the intention of the General Assembly, subject to appropriations, that the fees collected pursuant to subsection (b) of this Code section shall be made available and used exclusively for transportation purposes in this state.

(e) If the amount collected under this Code section is ever not appropriated for a fiscal year as provided by subsection (d) of this Code section, as determined jointly by the House Budget and Research Office and the Senate Budget and Evaluation Office, then the amount collected shall be reduced by 50 percent. Upon the conclusion of a second fiscal year in which the amount collected is not so appropriated, this Code section shall stand repealed and reserved, and such fees shall cease to be collected, on the date the appropriations Act for such fiscal year becomes effective. Such budget offices shall certify any such lack of appropriation to the Code Revision Commission for purposes of updating the Code in accordance with this subsection. (Code 1981, § 48-13-50.3, enacted by Ga. L. 2015, p. 236, § 5-15/HB 170; Ga. L. 2015, p. 1443, § 3/HB 106.)

Effective date. — This Code section became effective July 1, 2015.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2015, the enact-

ment of this Code section by Ga. L. 2015, p. 236, § 5-15/HB 170, was treated as impliedly repealed and superseded by Ga. L. 2015, p. 1443, § 3/HB 106, due to irreconcilable conflict.

Editor's notes. — Ga. L. 2015, p. 236, § 8-1/HB 170, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Transportation Funding Act of 2015.'"

Ga. L. 2015, p. 236, § 8-2/HB 170, not codified by the General Assembly, provides that: "It is the intention of the General Assembly, subject to appropriations and other constitutional obligations of this state, that year to year revenue increases be prioritized to fund education, transportation, and health care in this state."

Ga. L. 2015, p. 236, § 9-1(b)/HB 170, not codified by the General Assembly, provides that: "Tax, penalty, and interest liabilities and refund eligibility for prior taxable years shall not be affected by the passage of this Act and shall continue to be governed by the provisions of Title 48 of the Official Code of Georgia Annotated as it existed immediately prior to the effective date of this Act." This Act became effective July 1, 2015.

48-13-51. County and municipal levies on public accommodations charges for promotion of tourism, conventions, and trade shows.

JUDICIAL DECISIONS

Constitutionality.

O.C.G.A. § 48-13-51(a)(5)(B) was not unconstitutional under the Uniformity Clause, Ga. Const. 1983, Art. III, Sec. VI, Para. IV(a), but was a proper exception to the general law of § 48-13-51(a)(1)(D), which imposed a 3 percent cap on hotel/motel taxes, in that the statute applied uniformly on all taxing authorities within the scope of the statute's provisions, and because the classification made by the statute was not arbitrary or unreasonable. Cottrell v. Atlanta Dev. Auth., 770 S.E.2d 616, No. S14A1874, 2015 Ga. LEXIS 179 (2015).

Tax proceeds were revenue to pay for bonds. — Hotel/Motel tax funding agreement for a stadium project worked with a bond proceeds funding agreement to ensure that the stadium's tax proceeds were expended consistent with O.C.G.A. § 48-13-51(a)(5)(B), and there was no requirement that the development authority own the stadium for the tax proceeds to be considered as part of the revenue to pay for the bonds: under O.C.G.A. § 36-82-61(3), "revenue" included revenues arising out of or in connection with the operation or ownership of the stadium. Cottrell v. Atlanta Dev. Auth., 770 S.E.2d 616, No. S14A1874, 2015 Ga. LEXIS 179 (2015).

Cited in City of Atlanta v. City of College Park, 292 Ga. 741, 741 S.E.2d 147 (2013).

ARTICLE 7

TAXATION OF CONSUMER FIREWORKS

Effective date. — This article became effective July 1, 2015.

48-13-130. Definitions.

As used in this article, the term:

(1) "Consumer fireworks" shall have the same meaning as provided for in Code Section 25-10-1.

(2) "Seller" means the person who is issued a license pursuant to Code Section 25-10-5.1. (Code 1981, § 48-13-130, enacted by Ga. L. 2015, p. 274, § 9/HB 110.)

48-13-131. Excise tax imposed; rate of taxation; payment.

(a) An excise tax, in addition to all other taxes of every kind imposed by law, is imposed upon the sale of consumer fireworks and any items provided for in paragraph (2) of subsection (b) of Code Section 25-10-1 in this state at a rate of 5 percent per item sold.

(b) The excise tax imposed by this article shall be paid by the seller and due and payable in the same manner as would be otherwise required under Article 1 of Chapter 8 of this title. (Code 1981, § 48-13-131, enacted by Ga. L. 2015, p. 274, § 9/HB 110.)

48-13-132. Civil penalty for violations.

A seller who knowingly and willfully violates the requirements of this article shall be assessed a civil penalty of not more than $10,000.00 in addition to the amount of tax due. (Code 1981, § 48-13-132, enacted by Ga. L. 2015, p. 274, § 9/HB 110.)

48-13-133. Promulgation of rules and regulations.

The department is authorized to adopt rules and regulations necessary for the enforcement and implementation of the provisions of this Code section. (Code 1981, § 48-13-133, enacted by Ga. L. 2015, p. 274, § 9/HB 110.)